

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PATRICIA COSGROVE,

Plaintiff,

V.

NEW SEABURY RESOURCES
MANAGEMENT, INC.,

Defendant.

Civil Action No.
1:05-cv-10791-GAO

**AFFIDAVIT OF HILLARY SCHWAB, ESQ. REGARDING EXHIBITS TO
PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT**

I, Hillary Schwab, Esq., under oath, hereby state as follows:

1. I am an attorney in the law firm of Pyle, Rome, Lichten, Ehrenberg & Liss-Riordan, P.C. and counsel to Plaintiff Patricia Cosgrove in this matter.

2. I hereby certify that the exhibits attached to my affidavit are true and accurate copies of the original documents. I am unaware of any objection to the authenticity or admissibility of these exhibits. The exhibits are as follows:

Exhibit A: Affidavit of Patricia Cosgrove, dated June 8, 2006;

Exhibit B: Second Affidavit of Patricia Cosgrove, dated July 12, 2006;

Exhibit C: Memorandum from Cosgrove to Brennan, dated Feb. 3, 2003 (Exhibit 12 to Brennan deposition);

Exhibit D: Payroll Change Notice and New Hire Authorization, Patricia Cosgrove, May 11, 2003 (Exhibit 13 to Brennan deposition);

Exhibit E: Letter from Cosgrove to Brennan, dated May 2, 2003
(Exhibit 15 to Brennan deposition);

Exhibit F: Patricia Cosgrove disability pay calculation (Exhibit 16 to Brennan deposition);

Exhibit G: Administrative Assistant position description (Exhibit 3 to Perry deposition);

Exhibit H: Letter from Carlin to Brennan, dated Sept. 30, 2003 (Exhibit 17 to Brennan deposition);

Exhibit I: Letter from Carlin to Brennan, dated Oct. 8, 2003 (Exhibit 17 to Brennan deposition);

Exhibit J: Documents relating to position changes of Dan Stone, Scott Nickerson, and Robert McGraw (Exhibit 2 to Brennan deposition);

Exhibit K: Memorandum from Rodgers to O'Neil, Jan. 15, 2003 (Exhibit 6 to Brennan deposition);

Exhibit L: Payroll Change Notice and New Hire Authorization, Rhonda Rodgers, May 12, 2003 (Exhibit 7 to Brennan deposition);

Exhibit M: Memorandum from O'Brien to Brennan, Feb. 14, 2003 (Exhibit 3 to Brennan deposition);

Exhibit N: Payroll Change Notice and New Hire Authorization, Michelle O'Brien, March 10, 2003 (Exhibit 5 to Brennan deposition);

Exhibit O: Sales Manager position description (Exhibit 1 to Perry deposition);

Exhibit P: Relevant pages of the deposition of Patricia Cosgrove, Jan. 16, 2006;

Exhibit Q: Relevant pages of the deposition of Stephen Brennan, Jan. 18, 2006;

Exhibit R: Relevant pages of the deposition of Jennifer Perry, April 7, 2006; and

Exhibit S: Relevant pages of the deposition of Mark O'Neil, Feb. 14, 2006.

Signed under the pains and penalties of perjury this 14th day of July, 2006.

s/Hillary Schwab
Hillary Schwab

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2006, I caused a copy of this document and accompanying exhibits to be served by electronic filing on Howard I. Wilgoren, 6 Beacon Street, Suite 700, Boston, MA 02108, counsel for the defendant.

s/Hillary Schwab
Hillary Schwab, Esq.

UNITED STATES DISTRICT COURT
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AFFIDAVIT OF PATRICIA COSGROVE

I, Patricia Cosgrove, depose and state as follows:

1. I am the Plaintiff in the above-referenced matter. This affidavit is based on my personal knowledge.
2. I began working as an Account Executive at New Seabury Resources Management, Inc. (New Seabury) in April 1999.
3. I was promoted to the position of Conference Sales Manager in approximately June 1999.
4. In 2003, my rate of pay as Conference Sales Manager was \$17 per hour.
5. In February 2003, I requested a twelve-week maternity leave pursuant to the Family and Medical Leave Act, to begin on or about July 30, 2003.
6. Due to complications in my pregnancy, I was required to begin my FMLA leave on approximately May 11, 2003.

7. Shortly before I went out on FMLA leave in May 2003, in a meeting with General Manager Stephen Brennan, Jennifer Perry, Director of Catering Sales at New Seabury, and Roy Chase, Director of Food and Beverage at New Seabury, I was told that the Conference Sales Manager position was being eliminated and was offered the position of Administrative Assistant for the Catering Sales Department.

8. The rate of pay for the position of Administrative Assistant for the Catering Sales Department was \$12 per hour.

9. The position of Administrative Assistant for the Catering Sales Department that was offered to me was a full-time year-round position.

10. I accepted the position of Administrative Assistant for the Catering Sales Department in May 2003.

11. However, I continued in my duties as Conference Sales Manager and at the pay rate of \$17 per hour until I went on maternity leave.

12. When I returned to work at New Seabury after my maternity leave, I was not restored to my position as Conference Sales Manager or to the position of Administrative Assistant for the Catering Sales Department.

13. Instead, I was placed in a warehouse all day scanning documents. The work was monotonous, slow, and tedious.

14. The warehouse was a typical warehouse, with machinery and equipment all around. Attached photographs 1 and 2 depict the warehouse.

15. Attached photographs 3, 4, and 5 depict the Country Club facility in which my office would have been located for the position of Administrative Assistant for the Catering Sales Department.

16. I worked in isolation for most of the day in the warehouse.

17. In the position of Administrative Assistant in the Catering Sales Department, I would have been around other employees all day, communicating with my co-workers, supervisors, and clients.

18. I would have been supervised by Jennifer Perry in the position of Administrative Assistant in the Catering Sales Department, with whom I would have worked closely.

19. There was only one bathroom in the warehouse, which was dingy and dirty and which I was required to share with my male co-workers who also worked in the warehouse. Attached photograph 6 depicts the bathroom in the warehouse.

20. For the first one to two weeks that I was working at the warehouse, there was no refrigerator at the warehouse in which I could store my breastmilk. There was a refrigerator at the Country Club in which I could have stored my breastmilk if I had been working in the position of Administrative Assistant for the Catering Sales Department.

21. My rate of pay while working in the warehouse was \$12 per hour.

22. My employment at New Seabury was terminated on approximately October 31, 2003.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at East Falmouth, Massachusetts, this 8 day of June, 2006.

Patricia Cosgrove

Patricia Cosgrove

PHOTOGRAPH 1



PHOTOGRAPH 2



PHOTOGRAPH 3



PHOTOGRAPH 4



PHOTOGRAPH 5



PHOTOGRAPH 6



PHOTOGRAPH 7



Exhibit B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PATRICIA COSGROVE,

Plaintiff,

v.

NEW SEABURY RESOURCES
MANAGEMENT, INC.,

Defendant.

Civil Action No.
1:05-cv-10791-GAO

SECOND AFFIDAVIT OF PATRICIA COSGROVE

I, Patricia Cosgrove, depose and state as follows:

1. I am the Plaintiff in the above-referenced matter. This affidavit is based on my personal knowledge.
2. When Stephen Brennan offered me the position of Administrative Assistant in the Catering Sales Department, he told me that the position was a full-time, year-round position.
3. No one at New Seabury ever informed me that the position of Administrative Assistant in the Catering Sales Department was seasonal and/or that I might be laid off at the end of the season.
4. It was my understanding that Lauralee Taddeo was to fill in as Administrative Assistant in the Catering Sales Department as a temporary replacement for me while I was on maternity leave. I understood that I would be returned to the position when I came back from maternity leave.

5. Lauralee Taddeo's end date as Administrative Assistant in the Catering Sales Department was based on the anticipated date when I would return from my maternity leave.

6. When I returned from maternity leave and was placed in the warehouse scanning documents, I did not go to the Country Club building on a daily basis for my lunch and for breaks. I went to the Country Club building only when necessary to pump breastmilk and occasionally to use the bathroom or to purchase lunch from the kitchen/dining room.

7. I was never given a key to a door leading directly from the parking lot to my office in the warehouse. I was given one key—to the interior door separating my partitioned office from the warehouse. To get to that door, I had to walk through the warehouse itself.

8. Before Stephen Brennan informed me of my termination on October 31, 2003, I had not been informed that I might be laid off or terminated.

I declare under penalty of perjury that the foregoing is true and correct.

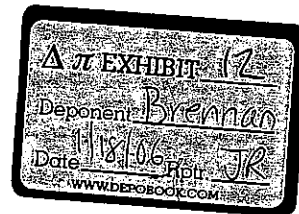
Executed at East Falmouth, Massachusetts, this 12 day of July, 2006.

Patricia Cosgrove
Patricia Cosgrove

Exhibit C



New Seabury® Cape Cod



MEMORANDUM

Date: February 3, 2003
To: Steve Brennan, General Manager
Cc: Mark J. O'Neil, Sr.
From: Patricia A. Cosgrove
Re: Maternity Leave

I hereby request maternity leave on or about July 30, 2003. It is my understanding, based on the Employee Handbook (Maternity Leave, pg. 39 & 40), I am eligible for paid leave and will receive 60% of my average weekly salary, paid in accordance with Company payroll schedule for a period of eight weeks. I am entitled to a twelve week leave, which upon return I am entitled to the same position I left, or a similar position with the same level, pay and length of service.

Patricia A. Cosgrove
Patricia A. Cosgrove
Conference Sales Manager

2-3-03
date

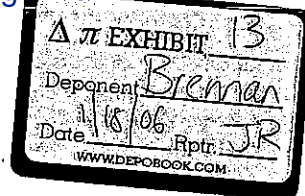
Steve Brennan
Steve Brennan
General Manager

2-3-03
date

0340

CONFIDENTIAL

Exhibit D



PAYROLL CHANGE NOTICE

and

NEW HIRE AUTHORIZATION

Today's Date: 5/11/03Dept. #: 423Dept. Name: CateringEffective Date: 5/11/03Employee/New Hire Name: Patricia CosgroveSocial Security Number: 015-58-7741Employee File Number: 793

Reason For Change(s):

- | | |
|--|--|
| <input type="checkbox"/> New Hire | <input type="checkbox"/> Probationary Period Completed |
| <input type="checkbox"/> Re-hire | <input type="checkbox"/> Length of Service Increase |
| <input type="checkbox"/> Promotion | <input type="checkbox"/> Re-evaluation of Existing Position |
| <input type="checkbox"/> Demotion | <input type="checkbox"/> Resignation |
| <input checked="" type="checkbox"/> Transfer | <input type="checkbox"/> Termination (Reason, see other below) |
| <input type="checkbox"/> Merit Increase | <input type="checkbox"/> Layoff |
| | <input type="checkbox"/> Eligible for Rehire (Y or N, see other below for explanation) |

☐ Leave of Absence From: To:
 (FMLA, WORKERS COMP., DISABILITY, PROVIDE DETAILS BELOW)
☐ Other (details)

	FROM	TO
<input type="checkbox"/> Department	<u>423</u>	<u>423</u>
<input type="checkbox"/> Position	<u>Comp Slo Mgr.</u>	<u>ADM. ASST.</u>
<input type="checkbox"/> Rate	<u>17.00</u>	<u>12.00</u>
<input type="checkbox"/> Exempt/Non		
<input type="checkbox"/> (FT/PT, Seasonal)		

Use of Company Vehicle: Yes ☐ No ☐Signed Policy Attached: ☐Change Authorized By: J. PerryDate: 5/11/03Change Approved By: [Signature]Date: 5/11/03

Exhibit E



Patricia A. Cosgrove
480 Old Meeting House Road
East Falmouth, MA 02536

May 2, 2003

Mr. Steve Brennan
General Manager
New Seabury Properties
155 Rock Landing Road
Mashpee, MA 02649

Dear Steve,

As you know, I am happy with my current position as Conference Sales Manager and would like to remain in this position. I plan to take a 12-week maternity leave beginning on or about July 30, 2003, and would like to return to my current position at the end of my leave.

You informed me on April 28th, however, that my position was being eliminated. I do not understand the reason for this change because the duties I perform are still obviously needed by the Resort. I can only surmise that this change is being made because of my pregnancy and intention to take maternity leave. I am aware that two other women, Rhonda Rodgers and Michele O'Brien, have also recently had their positions changed or eliminated while they were pregnant. These actions to all three of us seem to be pregnancy discrimination.

You have offered to me a position as Administrative Assistant beginning May 6th. This position would be a demotion, since it would mean an approximate 30% pay reduction and would require a change in my schedule. I cannot afford this loss of income and the schedule change would be very difficult for me. However, I also cannot afford to be unemployed, so I will take this position if it is the only choice I have.

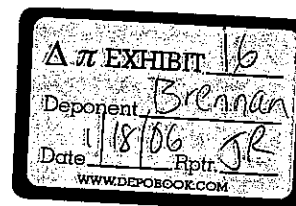
I am planning to file a complaint of discrimination with the Massachusetts Commission Against Discrimination. Please let me know if I can remain in my current position, or if I will have to take the demotion, in which case I will retain an attorney to represent me in my discrimination claim.

Sincerely,

Patricia A. Cosgrove
Patricia A. Cosgrove

0074

Exhibit F

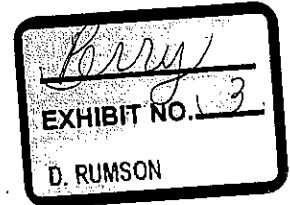


Date Prepared: _____
 Prepared by: _____
 At C & L: _____
 By Check and: _____
 Examined by: _____
 Reviewed by: _____
 C & L BR/3/06

7/14 baby (Oct 6)
 Patricia Cosgrove #17.02

			MAT.	Pd.	Date
W/E			60%		Pd
7/19/03	5 Days UAC	✓		680 -	7/25/03
7/26/03	5 Days UAC			680 -	8/8/03
8/2/03	5 MAT ✓		680	408 -	8/8/03
8/9/03	5 MAT ✓		680	816	8/22/03
8/16/03	5 MAT ✓		680		
8/23	5 MA ✓		680		
8/30	5 MAT ✓		680	816	9/5
9/6	5 MAT ✓		680	816	9/19
9/13	5 MAT ✓		680		
10/4	5 MAT ✓		680	408	10/19

Exhibit G



Administrative Assistant

Check email

Check phone messages

Make call backs

Send out Wedding Packages

Distribution, usually on Tuesdays, copies to:

Kitchen - 2 copies, Joe/Neil, Roy, Amy, John Shea, Jean,

Kathy, Meg, Tanya, EO Book, & Extra Copy

Any missing EO's should be emailed to all of the above, Josh & Z hard copies to the kitchen and a copy for the EO Book

On Tuesday copy the event sheets from the book that have changes & give to Jean & Kathy - so they can update the reader board

Keep up with the supplies for the sales department

Manager's Schedule - email to: Steve Brennan, Tanya, Jean,

Sales Dept. and Post in Sales office, Jennifer's Office and Kitchen

Do Checks - attach GRAR sheets

Contracts

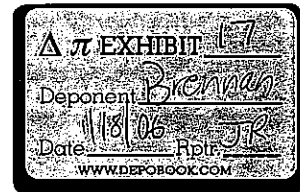
Event Orders

Invoices

Refunds

update the calendar, big book & wedding list - weddings

Exhibit H



PYLE, ROME, LICHTEN & EHRENBURG, P.C.

Attorneys at Law

18 Tremont Street, Suite 500

Boston, MA 02108

Telephone (617) 367-7200

Fax (617) 367-4820

Warren H. Pyle

David B. Rome

Harold L. Lichten*

Betsy Ehrenberg

Shannon Liss-Riordan**

Terence E. Coles

Lara A. Sutherlin

Jennifer B. Rieker

Alison D. Morantz

M. Amy Carlin

*Also admitted in Maine

**Also admitted in New York

September 30, 2003

Steven Brennan, General Manager

New Seabury Properties

155 Rock Landing Road

Mashpee, MA 02649

RE: Patricia Cosgrove

Dear Mr. Brennan:

Our law firm has been retained by Patricia Cosgrove in connection with her employment at New Seabury Properties.

Based on the facts as we understand them, Ms. Cosgrove's demotion and the elimination of her position constituted sex and pregnancy discrimination, in violation of Massachusetts General Laws 151B § 4, and with violations of Mass. Gen. Law. Ch. 149 § 105D, the Massachusetts Maternity Leave Act.

As you are certainly aware, Ms. Cosgrove's maternity leave ends next week. Accordingly, Ms. Cosgrove plans to return to work next week to the Administrative Assistant position to which she was demoted, however, this is only because New Seabury Properties has made it clear this is her only option if she wishes to continue working.

Enclosed is a copy of the Charge of Discrimination we are filing on Ms. Cosgrove's behalf with the Massachusetts Commission Against Discrimination and the Equal Employment Opportunity Commission. We intend to file this Charge next Wednesday, October 8, 2003.

0007

PYLE, ROME, LICHTEN & EHRENBURG, P.C.

Mr. Steven Brennan
September 30, 2003
Page 2 of 2

Please call me if you would like to discuss this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'M. Amy Carlin', with a stylized, flowing script.

M. Amy Carlin

Enclosure

cc: Shannon Liss-Riordan, Esq.
Patricia Cosgrove

This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form.

☐ EEOC

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION
(State or local Agency, if any)

and EEOC

NAME (Indicate Mr., Ms., or Mrs.)
Patricia Cosgrove

HOME TELEPHONE NO. (Include Area Co.)
(508) 548-3311

STREET ADDRESS

480 Old Meeting House Road

CITY, STATE AND ZIP CODE

East Falmouth, MA 02536

COUNTY

Barnstable

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME

New Seabury Properties

NO. OF EMPLOYEES/MEMBERS

TELEPHONE NUMBER (Include Area Code)

(508) 477-9111

STREET ADDRESS

The Club at New Seabury, P.O. Box 549, 155 Rock Landing Road, Mashpee, MA 02649-0549

CITY, STATE AND ZIP CODE

TELEPHONE NUMBER (Include Area Code)

NAME

STREET ADDRESS

CITY, STATE AND ZIP CODE

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es)).

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☐ AGE ☐ RETALIATION ☒ OTHER (Specify) Pregnancy

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE
(Month, day, year) Ongoing

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

SEE ATTACHMENT A

3069

MY COMMISSION EX 423-04

☒ I also want this charge filed with the EEOC.
I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing

NOTARY - (When necessary to meet State and Local Requirements)
Deborah Marie Gauthier

I swear or affirm that I have read the above charge and that it is true and correct.

ATTACHMENT A

Complainant is a woman who worked as a Sales Manager for New Seabury Properties in Mashpee, Massachusetts. Shortly after announcing that she was pregnant, Complainant's employer told her she would be demoted. While Complainant was out on pregnancy/maternity leave, she was in fact demoted. In the last year, two other women at the company have had their positions changed or eliminated while they were pregnant. While Complainant agreed under protest to accept the demotion, she alleges that the elimination of her position and her demotion were discriminatory.

Complainant charges New Seabury Properties with discrimination on the basis of sex and pregnancy in violation of Mass. Gen. Law. Ch. 151B § 4, and with violations of Mass. Gen. Law. Ch. 149 § 105D, the Massachusetts Maternity Leave Act.

Exhibit I



PYLE, ROME, LICHTEN & EHRENBERG, P.C.

Attorneys at Law

18 Tremont Street, Suite 500
Boston, MA 02108

Telephone (617) 367-7200
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Shannon Liss-Riordan**
Terence E. Coles

Lara A. Sutherlin
Jennifer B. Rieker
Alison D. Morantz
M. Amy Carlin

*Also admitted in Maine

**Also admitted in New York

October 8, 2003

Stephen Brennan, General Manager
New Seabury Properties
20 Red Brook Road
Mashpee, MA 02649

RE: Patricia Cosgrove

Dear Mr. Brennan:

We have not heard from you in response to our correspondence dated September 30, 2003, which enclosed a copy of the Charge of Discrimination we are filing on Ms. Cosgrove's behalf with the Massachusetts Commission Against Discrimination and the Equal Employment Opportunity Commission. However, we understand from Ms. Cosgrove that you may not have received it, and we are attaching both our letter and the Charge here.

We have now learned that when Ms. Cosgrove returned to work yesterday, on the exact day her maternity leave elapsed, she was informed that she no longer has a job.

New Seabury Properties' action here is untenable and discriminatory. Ms. Cosgrove made it clear to New Seabury Properties on May 2, 2003 that she was accepting the position of Administrative Assistant, not because it was a position she wanted, but because New Seabury had eliminated her Sales Manager position and had given her no other option if she wanted to continue working. Ms. Cosgrove accepted this position in writing, by letter to you dated May 2, 2003. In that letter, she also informed you of her belief that New Seabury's elimination of her position after she gave notice of her pregnancy was discriminatory, and that barring New Seabury's reconsidering her demotion, she would be filing a discrimination claim.

0071

PYLE, ROME, LICHTEN & EHRENBURG, P.C.

Mr. Stephen Brennan

October 8, 2003

Page 2 of 2

In light of the above, New Seabury Properties' action here is on its face unlawful retaliation and evidences a serious disregard for Massachusetts' anti-discrimination laws. We plan to add New Seabury Properties' most recent act of discrimination to Ms. Cosgrove's Charge and file it immediately.

Please call me if you would like to discuss this matter.

Sincerely,



M. Amy Carlin

Enclosures

cc: Shannon Liss-Riordan, Esq.
Patricia Cosgrove

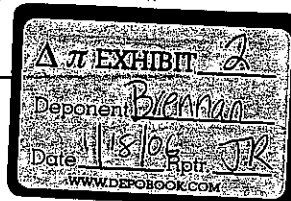
Exhibit J



PAYROLL CHANGE NOTICE

and

NEW HIRE AUTHORIZATION

Today's Date: 3/5/03Dept. #: 520Dept. Name: Golf maint.Effective Date: 3/2/03Employee/New Hire Name: Dan StoneSocial Security Number: 011 - 70 - 6198Employee File Number: 604

Reason For Change(s):

- | | |
|---|--|
| <input type="checkbox"/> New Hire | <input type="checkbox"/> Probationary Period Completed |
| <input type="checkbox"/> Re-hire | <input type="checkbox"/> Length of Service Increase |
| <input type="checkbox"/> Promotion | <input type="checkbox"/> Re-evaluation of Existing Position |
| <input type="checkbox"/> Demotion | <input type="checkbox"/> Resignation |
| <input type="checkbox"/> Transfer | <input type="checkbox"/> Termination (Reason, see other below) |
| <input type="checkbox"/> Merit Increase | <input type="checkbox"/> Layoff |
| | <input type="checkbox"/> Eligible for Rehire (Y or N, see other below for explanation) |

☐ Leave of Absence From: To:

(FMLA, WORKERS COMP., DISABILITY, PROVIDE DETAILS BELOW)

☐ Other (details)

	FROM	TO
<input type="checkbox"/> Department	<u>520</u>	<u>520</u>
<input checked="" type="checkbox"/> Position	<u>Golf Super.</u>	<u>Asst Super.</u>
<input checked="" type="checkbox"/> Rate	<u>\$ 2230.77</u>	<u>\$ 1730.77 Blwk</u>
<input type="checkbox"/> Exempt/Non	<u>58,000.</u>	<u>45,000.</u>
<input type="checkbox"/> FT/PT, Seasonal		

Use of Company Vehicle:

Yes

No

Signed Policy Attached:

Change Authorized By:

Date:

Change Approved By: [Signature]Date: 3/5/03

CONFIDENTIAL

0362

CHANGE OF STATUS

Name: SCOTT NICKERSON Effective Date 1-27-03 File No. _____

New Hire _____ Rehire _____ Transfer _____ Termination _____

Source: Advertisement _____ Employee Referral _____ Resume _____ Walk In _____
Employment Agency _____ Dept/Emp.& Training _____ Other _____

Merit Increase _____ Promotion _____ Other ☒ CHANGE IN POSITION & RESPONSIBILITIES

New/Current Status:

Change To:

Department Name _____
Department Number _____

Department Name _____
Department Number _____

Job Title Dir. of GOLF OP'S
Pay Grade _____

Job Title GOLF COURSE SUPT.
Pay Grade _____

Salary: \$ _____ Hour
\$ _____ BiWeekly
\$ 90,000 Annual

Salary: \$ _____ Hour
\$ 31,539 BiWeekly
\$ 81,000 Annual

Non-Exempt _____ Exempt ☒
Tip _____ Ind-Tip _____ Non-Tip _____

Non-Exempt _____ Exempt ☒
Tip _____ Ind-Tip _____ Non-Tip _____

Status Type:

Full Time _____ Part Time _____
Temporary _____ End Date _____
Seasonal _____ End Date _____

Status Type:

Full Time _____ Part Time _____
Temporary _____ End Date _____
Seasonal _____ End Date _____

Scheduled Hours per Week _____
Adj. Hours/Emp Convenience _____

Scheduled Hours per Week _____
Adj. Hours/Emp Convenience _____

Performance Review Date: _____

Performance Review Date: _____

Authorized Use of Company Vehicle
Yes ☒ No _____
(If yes attach signed Vehicle Policy)

Authorized Use of Company Vehicle
Yes ☒ No _____
(If yes attach signed Vehicle Policy)

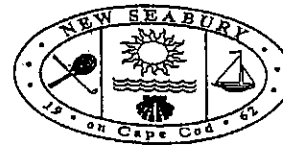
CONFIDENTIAL

0363



PAYROLL CHANGE NOTICE

and



NEW HIRE AUTHORIZATION

Today's Date: 1-15-03Dept. #: 510Dept. Name: GOLF OPERATIONSEffective Date: 1-20-03 ✓Employee/New Hire Name: ROBERT M. GRAY

Social Security Number: _____

Employee File Number: _____

Reason For Change(s):

- | | |
|---|--|
| <input type="checkbox"/> New Hire | <input type="checkbox"/> Probationary Period Completed |
| <input type="checkbox"/> Re-hire | <input type="checkbox"/> Length of Service Increase |
| <input type="checkbox"/> Promotion | <input checked="" type="checkbox"/> Re-evaluation of Existing Position |
| <input type="checkbox"/> Demotion | <input type="checkbox"/> Resignation |
| <input type="checkbox"/> Transfer | <input type="checkbox"/> Termination (Reason, see other below) |
| <input type="checkbox"/> Merit Increase | <input type="checkbox"/> Layoff |
| | <input type="checkbox"/> Eligible for Rehire (Y or N, see other below for explanation) |

☐ Leave of Absence From: _____ To: _____
(FMLA, WORKERS COMP., DISABILITY, PROVIDE DETAILS BELOW)

☒ Other (details) _____

<input type="checkbox"/> Department		
<input checked="" type="checkbox"/> Position	<u>Head Golf Prof.</u>	<u>Dir. of Instruction</u>
<input checked="" type="checkbox"/> Rate	<u>2230.77</u>	<u>1346.15</u>
<input type="checkbox"/> Exempt/Non		
<input type="checkbox"/> FT/PT, Seasonal		

Use of Company Vehicle: Yes ☒ No ☐ Signed Policy Attached: _____

Change Authorized By: _____ Date: _____

Change Approved By: [Signature] Date: 1-15-03

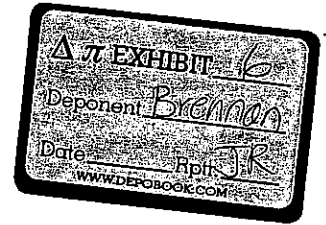
CONFIDENTIAL

636

Exhibit K



New Seabury® Cape Cod



Date: January 15, 2003

To: Mark J. O'Neil, Sr.

From: Rhonda H. Rodgers *RHR*

CC: Lee O'Shea, Personnel

Re: Notification of Maternity Leave

This is to notify you of my request for a twelve-week maternity leave beginning on or about my due date of February 28, 2003. It is my understanding that I will be paid 60% of my weekly salary for the first eight weeks of my leave and will not be paid for the remaining 4-week period.

I intend on returning to my current position in a full time capacity at the end of my twelve-week leave. Please let me know if you require any additional information.

Thank you.

CONFIDENTIAL

0360

Exhibit L



PAYROLL CHANGE NOTICE

and



NEW HIRE AUTHORIZATION

day's Date: 5/12/03apt. #: 501 Dept. Name: MembershipEffective Date: 5/2/03Employee/New Hire Name: Rhonda RodgersSocial Security Number: 381-90-1042Employee File Number: 8784

Reason For Change(s):

- | | |
|---|--|
| <input type="checkbox"/> New Hire | <input type="checkbox"/> Probationary Period Completed |
| <input type="checkbox"/> Re-hire | <input type="checkbox"/> Length of Service Increase |
| <input type="checkbox"/> Promotion | <input type="checkbox"/> Re-evaluation of Existing Position |
| <input type="checkbox"/> Demotion | <input type="checkbox"/> Resignation |
| <input type="checkbox"/> Transfer | <input type="checkbox"/> Termination (Reason, see other below) |
| <input type="checkbox"/> Merit Increase | <input type="checkbox"/> Layoff |
| | <input type="checkbox"/> Eligible for Rehire (Y or N, see other below for explanation) |

☐ Leave of Absence From: To:

(FMLA, WORKERS COMP., DISABILITY, PROVIDE DETAILS BELOW)

☐ Other (details):

Did not return from maternity leave

<input type="checkbox"/> Department	<input type="text"/>	<input type="text"/>
<input type="checkbox"/> Position	<input type="text"/>	<input type="text"/>
<input type="checkbox"/> Rate	<input type="text"/>	<input type="text"/>
<input type="checkbox"/> Exempt/Non	<input type="text"/>	<input type="text"/>
<input type="checkbox"/> FT/PT, Seasonal	<input type="text"/>	<input type="text"/>

Use of Company Vehicle: Yes ☐ No ☐ Signed Policy Attached: ☐Change Authorized By: Date: Change Approved By: Date:

0357

CONFIDENTIAL

Exhibit M



New Seabury® Cape Cod



To: Stephen Brennan, General Manager
From: Michele M. O'Brien
Date: 2/14/03
Re: Maternity Leave

This letter is to serve as notice for my request for twelve-week maternity leave beginning on or about my due date of August 28, 2003. As stated in the New Seabury Resource Management, Inc Employee Handbook, I understand as a full-time employee I will receive 60% of my average weekly salary paid in accordance with Company payroll schedule for a period of eight weeks.

At the end of this twelve-week leave, it is my intention to resume my current position and schedule.

Michele M O'Brien

Michele M. O'Brien

02-14-08

Date

[Signature]

Stephen Brennan

2/21/03

Date

Steve -
 Please sign and
 forward to Lee
 O'Shea for my
 employee file.
 Thank you Michele

Steve -
 Michele is
 aware that it
 is for only 8 wks.
 Lee

CONFIDENTIAL 0356

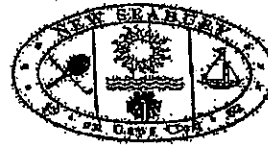
Exhibit N



PAYROLL CHANGE NOTICE

and

NEW HIRE AUTHORIZATION



Today's Date: 3/10/03
 Dept. #: 330 Dept. Name: Comdo R-E Sales

Effective Date: 3/10/03

Employee/New Hire Name: Michelle O'Brien
 Social Security Number: 033-64-4516
 Employee File Number: 1172

Reason For Change(s):

- | | |
|---|--|
| <input type="checkbox"/> New Hire | <input type="checkbox"/> Probationary Period Completed |
| <input type="checkbox"/> Re-hire | <input type="checkbox"/> Length of Service Increase |
| <input type="checkbox"/> Promotion | <input type="checkbox"/> Re-evaluation of Existing Position |
| <input type="checkbox"/> Demotion | <input type="checkbox"/> Resignation |
| <input type="checkbox"/> Transfer | <input type="checkbox"/> Termination (Reason, see other below) |
| <input type="checkbox"/> Merit Increase | <input checked="" type="checkbox"/> Layoff <u>Department change</u> |
| | <input type="checkbox"/> Eligible for Rehire (Y or N, see other below for explanation) |

☐ Leave of Absence From: To:
 (FMLA, WORKERS COMP., DISABILITY, PROVIDE DETAILS BELOW)
☐ Other (details) _____

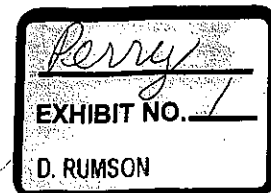
<input type="checkbox"/> Department		
<input type="checkbox"/> Position		
<input type="checkbox"/> Rate		
<input type="checkbox"/> Exempt/Non		
<input type="checkbox"/> FT/PT, Seasonal		

Use of Company Vehicle: Yes ☐ No ☐ Signed Policy Attached: ☐
 Change Authorized By: [Signature] Date: 3/20/03
 Change Approved By: _____ Date: _____

CONFIDENTIAL

0355

Exhibit O



POSITION TITLE: Sales Manager
DEPARTMENT: Conference Sales
REPORTS TO: Director of Sales

EXEMPT: x NON-EXEMPT: _____

POSITION: Responsible for soliciting and booking group business and ensuring Group booking goals are met.

RESPONSIBILITIES:

1. Solicit group business through telemarketing.
2. Solicit group business via personal calls to corporations and other Group markets in assigned territory.
3. Arrange and perform site inspections of the property to potential Clients.
4. Ensure timely and accurate communication in both client and hotel Operation team.
5. Develop and maintain accurate and workable trace files to ensure timely contact of existing accounts.
6. Monitor the status of all bookings to ensure contracts and deposits are received in a timely manner.
7. Provide Conference Services department with accurate details and all pertinent information when turning over files.
7. Maintain contact with client and conference service representative Assigned to group while their events are taking place.
9. Attend and staff Trade Shows.
10. Attend local and regional trade meetings, i.e., H.S.M.A., Meeting Planners International, etc.
11. Submit weekly activities report to Director of Sales.
12. Perform special projects as assigned by Director of Sales.

QUALIFICATIONS:

EDUCATION: College degree preferred.
EXPERIENCE: Hotel or Other sales experience required.
OTHER: Overnight Travel flexibility required.

Exhibit P

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MASS

3 C.V. NO.: 05-10791-GAO

4

5 * * * * *

6 PATRICIA COSGROVE, *

7 Plaintiff, *

8 vs. *

9 NEW SEABURY RESOURCES, *

10 MANAGEMENT, INC., *

11 Defendant. *

12 * * * * *

13

14 DEPOSITION OF: PATRICIA COSGROVE

15

16 LAW OFFICE OF HOWARD WILGOREN

17 6 Beacon Street

18 Boston, Massachusetts 02110

19

20

21 January 16, 2006 10:00 a.m. - 4:53 p.m.

22

23 KATHRYN K. GIANNO

24 COURT REPORTER

1 APPEARANCES:

2 Representing the Plaintiff:

3 HILLARY SCHWAB, ESQ.

4 PYLE, ROME, LICHTEN, ETTRENBURG

5 18 Tremont Street, 15th Floor

6 Boston, MA 02108

7 Tel.: 617.367.7200

8

9 Representing the Defendant:

10 HOWARD WILGOEN, ESQ.

11 6 Beacon Street

12 Boston, MA 02110

13 Tel.: 617.523.5233

14

15

16

17

18

19

20

21

22

23

24

1 I N D E X

2 WITNESS: PATRICIA COSGROVE

3

4 EXAMINATION

5 MR. WILGOREN 5

6

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1 Q I stand corrected. I said it was a bad
2 choice of words. And that was done -- you were on
3 the clock when you were doing that, you were being
4 paid for that time?

5 A Yes.

6 Q And you say it wasn't done with the
7 consent, but it was done with the full knowledge of
8 the management of New Seabury?

9 A Correct.

10 Q On how many occasions during the course of
11 a regular day would it be necessary for you to leave
12 your work site and go to Tanya Copestik's office in
13 the administration building to pump your breasts?

14 A Once or twice a day.

15 Q How long would that entire process take?

16 A Generally, 15 to 20 minutes each time.

17 Q That would include leaving your work site,
18 getting in your car, driving over there, doing what
19 was necessary to pump your breasts and driving back?

20 A Yes. I would say, approximately.

21 Q Fifteen to 20 minutes?

22 A Yes.

23 Q Maybe a little more?

24 A Maybe a little more, maybe a little less.

1 A No.

2 Q How did you assign the rooms?

3 A I was working in a program in the computer
4 that allows me to block rooms for corporate groups
5 separate from social reservations.

6 Q And then you said you got a promotion?

7 A Yes.

8 Q Do you remember when that was?

9 A Maybe a couple months after I started.

10 Q What did your job duties consist of at
11 that time?

12 A Selling the actual rooms and function
13 space, meeting with clients, showing the property.

14 Q How would you go about -- did you obtain
15 clients?

16 A We were given lists for cold calling and I
17 would assume -- I assumed lists from other sales
18 staff.

19 Q Were you proactive in any way in obtaining
20 customers or clients?

21 MS. SCHWAB: Objection.

22 THE WITNESS: Yes.

23 Q (By Mr. Wilgoren:) What would you do?

24 A We would come up with creative ways to

1 draw in new clients, the sales team would.

2 Q Did your job change at some point in time?

3 A At some point in time from start to
4 finish?

5 Q Yes.

6 A Yes, it did.

7 Q When was the next change in your job
8 responsibilities or title?

9 A I would say probably the next significant
10 change was when the old clubhouse was torn down and
11 the new clubhouse was built.

12 Q What happened to your job at that time?

13 A They relocated me to the sales office in
14 the new country club.

15 Q What was your job title at that point?

16 A It was the same position.

17 Q So your position stayed the same until it
18 was eliminated?

19 A Yes.

20 Q That was Sales Manager?

21 A Sales Manager, correct.

22 Q And is it fair to say that, particularly
23 when you were in the country club when you relocated
24 there, that the focus of your job was on the lodging

1 aspect of groups that would come to New Seabury?

2 A That was probably 50 percent of the job
3 description.

4 Q Well, without regard to the job
5 description, I'm asking you about what your actual
6 job duties were on a day-to-day basis.

7 A Yes, that was primarily my responsibility.

8 Q Tell me how you would go about handling
9 groups that came in, the lodging aspect of that.

10 A I would assign them -- block them rooms,
11 with the initial contact from the client, I believe,
12 I blocked the rooms based on their needs for their
13 attendees. I would also set up function space for
14 them and meeting rooms.

15 Q You set up the function space?

16 A Yes.

17 Q How would you go about doing that?

18 A I would secure and reserve function space
19 based on our availability.

20 Q How would you do that?

21 A They had a log, quite a large book in the
22 conference sales and catering sales department that
23 recorded all events going on on a day-to-day basis.

24 Q What else did you do?

1 A Rooms, function space, meeting space. I
2 would secure the meeting space the same way.

3 Q In the logbook?

4 A By looking at the log, correct.

5 Q Where is this logbook located?

6 A In the sales office in the country club.

7 Q Then at some point would you transfer the
8 group over to someone else in the sales department?

9 A The catering sales department would then
10 handle it for all food and beverage selections.

11 Q Who would you hand the case off to?

12 A Generally the manager of catering sales.

13 Q Who was?

14 A Jennifer Perry at the time.

15 Q What percentage of your job
16 responsibilities for groups revolved around lodging?

17 A 100 percent.

18 Q So the other functions were very little
19 part -- took up very little part of your time?

20 A They were in conjunction with the rooms.

21 MR. WILGOREN: Let's have this marked as
22 Exhibit 1.

23

24 (Exhibit No. 1, Resume for

1 corporations or other group markets did you
2 undertake?

3 A I'm not sure I follow the question.

4 Q Well, you list your -- I take it under
5 "New Seabury Properties" in your resume, that you
6 engaged in "related marketing endeavors to
7 corporations and other group markets." Do you see
8 that, the first line under "New Seabury"?

9 A Oh, "telemarketing, mailings and related
10 marketing endeavors."

11 Q Right.

12 A Telemarketing would be cold calls;
13 mailings, we sent out specific promotions.
14 Especially when the new club opened, we introduced
15 the new club with new conference space, state of the
16 art function and meeting space. Related marketing
17 endeavors would probably relate to any off-site
18 sales meetings, Chamber meetings, expos.

19 Q You would attend all of those?

20 A Yes.

21 Q Now, what is "a range of performed site
22 inspections of the property to potential clients"
23 mean?

24 A Clients would set up an appointment with

1 myself or other sales teams to view the property and
2 view the sleeping accommodations, the whole property
3 from function rooms, to meeting rooms, to
4 restaurant, to pool and tennis facilities and
5 lodging.

6 Q That's something that you or other members
7 of the sales staff, catering sales staff would
8 perform?

9 A Catering sales, no.

10 Q Who do you mean by "sales staff"?

11 A It would be directly in conference sales.
12 At one point it was Rhonda Rogers, Tanya Copestik
13 and myself.

14 Q Who was it after your job was eliminated?

15 A After my job was eliminated?

16 Q Right.

17 A I couldn't say.

18 Q Or prior to your job being eliminated?

19 A Just myself.

20 Q Just yourself? You were the only one that
21 showed potential clients the facility?

22 A No.

23 Q Who else would do that?

24 A The catering sales probably showed

1 Q Would the catering sales staff also book
2 meeting and function space?

3 A Yes.

4 Q And take reservations, revisions, deposits
5 and billings?

6 A They would not take reservations, no.

7 Q Well, lodging reservations?

8 A No.

9 Q You were the only one that did that until
10 your job was eliminated?

11 A Yes.

12 Q Would the catering sales staff also create
13 and maintain existing group accounts, contracts,
14 deposits, and invoices?

15 A Yes.

16 Q And assist clients with all on- and
17 off-property activity arrangements as needed?

18 A Yes.

19 Q And assist catering sales in function,
20 setup, and other departments as needed?

21 A Yes.

22 Q Attend weekly events, order food and
23 beverage meetings to address needs related to
24 upcoming group events?

1 A Yes.

2 Q Would the other folks in catering sales
3 also attend local retail trade shows and meetings?

4 A Yes.

5 Q Including Cape Cod Chamber of Commerce
6 meetings?

7 A On occasion, yes.

8 Q And the Cape Cod Hospitality Marketing
9 Association meetings?

10 A No.

11 Q No? You were the only one that went to
12 those meetings?

13 A Yes.

14 Q Where were those meetings held?

15 A Different locations on the Cape, hotels or
16 restaurants.

17 Q How many hours a week did you work?

18 A Forty-plus.

19 Q Forty-plus? What does "40-plus" mean?

20 A Forty on a regular basis, but more if they
21 needed me to.

22 Q You didn't have a rule that you would work
23 no more than 40 hours?

24 A No.

1 A When did I first become pregnant or when
2 did I notify them?

3 Q When did you first become pregnant?

4 A November '02.

5 Q When did you first notify anyone at New
6 Seabury that you were pregnant?

7 A February of '03.

8
9 (Exhibit No. 8, Memo Requesting
10 Maternity Leave Dated February
11 3, 2003.)

12

13 Q (By Mr. Wilgoren:) Ms. Cosgrove, I'll show you
14 what's been marked as Deposition Exhibit No. 8 and
15 ask if you can identify that document.

16 A It's the memo requesting maternity leave
17 to the general manager.

18 Q That's Steven Brennan?

19 A Yes, with a copy to Mark O'Neil.

20 Q When was Mr. Brennan engaged as the
21 general manager; do you know?

22 A Maybe January of '03.

23 Q Who was the general manager prior to that
24 time?

1 A He acknowledged the fact that he had
2 received my request for a maternity leave, and
3 congratulated me. And I then informed him I had
4 planned on staying at New Seabury through my
5 maternity leave and -- up to my maternity leave if
6 my health permitted me to, and I intended on coming
7 back as a full-time employee after my maternity
8 leave.

9 Q What, if anything, did Mr. Brennan
10 respond?

11 A And then he was, like, "Well, unless
12 you're like my wife and you're on bed rest for a
13 while and don't ever go back to work." Something to
14 that extent.

15 And I said, "I totally am committed
16 to coming back to work after my maternity leave."

17 Q All of which was what you said in the
18 memorandum?

19 A Yes.

20 Q Why did you feel the need to reiterate
21 that if it was in your memorandum?

22 A Because I believe that personal contact is
23 a good way to handle things as well.

24 Q Did he ever tell you you couldn't have

1 A He mentioned that there would be a pay cut
2 from my hourly salary from, I think it was \$17 to
3 \$12 an hour.

4 Q Was there any further discussion about the
5 job you were being offered?

6 A That the hours -- I had asked if the hours
7 would change, if it was still Monday through Friday.
8 And he had informed me that he would like it to be
9 Tuesday through Saturday since Saturday is one of
10 the busiest days for the catering sales department,
11 and that's when they need the most help for sites.
12 And the other catering sale staff was usually very
13 busy with weddings and functions on that day, so
14 they would need someone in the office.

15 Q So the office was another reason, the fact
16 that the administrative office was closed on Monday.
17 Was that communicated to you?

18 MS. SCHWAB: Objection.

19 THE WITNESS: No, it was never closed on
20 Monday.

21 Q (By Mr. Wilgoren): Did other members of
22 the catering department work Tuesday to Saturday as
23 well?

24 MS. SCHWAB: Objection.

1 Q They all felt it was just a bad business
2 decision or unfortunate?

3 MS. SCHWAB: Objection.

4 THE WITNESS: No, I don't believe they
5 commented either way.

6 Q (By Mr. Wilgoren:) Is that the only people you
7 spoke to about the elimination of your job up to
8 May 5, 2003?

9 A No, I believe I mentioned that, as well,
10 there was family and friends that I spoke to about
11 my elimination.

12

13 (Exhibit No. 10, Letter to Steve
14 Brennan from Patricia Cosgrove
15 Dated May 2, 2003.)

16

17 Q (By Mr. Wilgoren:) Ms. Cosgrove, I've put in
18 front of you what's been marked Deposition Exhibit
19 No. 10. Can you identify this document?

20 A Yes, it was the document that I sent to
21 Steve after he informed me of my position being
22 eliminated.

23 Q Well, look at the date, it's May 2, 2003.
24 That would have been the Friday after the Monday.

1 THE WITNESS: I believe it was part of the
2 reason.

3 Q (By Mr. Wilgoren:) But you were not denied
4 maternity leave, were you?

5 A No, I was not.

6 Q So you met with Steve Brennan on May 5,
7 2003?

8 A Yes.

9 Q Where did the meeting take place?

10 A In Jen Perry's office.

11 Q Who was present?

12 A Jen Perry, Steve and myself.

13 Q Tell me, to the best of your recollection,
14 exactly what each individual in the room said at
15 that meeting.

16 A To the best of my recollection, Steve had
17 my letter in his hand and said, "I received your
18 letter and it is what it is. Your position has been
19 eliminated as conference sales manager. We've
20 offered you a position as administrative assistant
21 in the sales office, and that's the offer on the
22 table."

23 Q Did anyone else say anything in response?

24 A No, Jennifer was silent.

1 Q Did you say anything?

2 A I said, "Well, I really would like my old
3 job back." And I stated the reasons why, because I
4 felt I was needed by the sales office to perform my
5 job as I had always been, and it was my recollection
6 that, at a past meeting with Mark O'Neil, we were to
7 work as a team, and that the sales office would be
8 combining conference sales and the catering sales to
9 work together as one department. And I was misled,
10 and I feel that my position is still needed.

11 But if this is the only the position
12 that's available, I will accept the position,
13 because I can't afford to be without a job or
14 healthcare benefits. So I intend on accepting the
15 position and will return after maternity leave.

16 Q So your intention was to stop working at
17 that point as of the meeting?

18 A No, to accept the position and return to
19 it when I come back from maternity leave.

20 Q Anything else? Is that the full
21 recollection of what everyone said at the meeting?

22 A Yes, it was a very short meeting.

23 Q What did you do after the meeting?

24 A I went back to work.

1 A I don't know exactly what she said, but it
2 was something to the effect that, "Do what you need
3 to do. Take care of yourself; you're pregnant."

4 Q Had you provided any medical
5 documentation, any notes from Dr. Talbert prior to
6 May 6, 2003 to support the varicosity issue?

7 A No, I don't believe so.

8 Q What limitations on your activities did
9 you place on yourself outside of work as a result of
10 the varicosity issue?

11 A Outside of work?

12 Q Yes.

13 A Rest with my right leg elevated, three
14 times a day.

15 Q What had happened as of -- strike that.

16 You told me a few moments ago, Ms.
17 Cosgrove, that prior to receiving Lee O'Shea's
18 e-mail, you hadn't considered getting a medical
19 note. What prompted the change, the drastic change
20 that resulted in Dr. Talbert writing this letter
21 recommending that you stop work as of May 11, 2003?

22 A Based on her examination in her office,
23 she felt it best that I remain off my feet.

24 Q And did you remain off your feet for the

1 duration of your pregnancy?

2 A No, I did not.

3 Q So, you stopped working because you were
4 supposed to remain off your feet, but you're
5 testifying here now that you did not follow the
6 doctor's advice and remain off your feet?

7 A I followed the doctor's advice with her
8 restrictions to remain off my feet. That
9 constituted the three times a day resting with my
10 feet elevated. I was not housebound or bedridden.

11 Q So, you elevated your foot three times a
12 day. How long did you elevate your foot three times
13 a day, for each time?

14 A An hour.

15 Q What times during the day or night?

16 A Morning, noon, and night, approximately.

17 Q And that was the reason why you had to
18 stop work as of May 11, 2003?

19 A Yes.

20 Q Could you have elevated your leg at work
21 one of the three times and done the other two hours
22 at home?

23 MS. SCHWAB: Objection.

24 THE WITNESS: I did elevate my leg at

1 work.

2 Q (By Mr. Wilgoren:) I mean, after May 11?

3 A Could I have?

4 Q Yes.

5 A I suppose I could have if my condition
6 hadn't progressed the way it did.

7 Q How did your condition progress the way it
8 did as of May 11, 2003?

9 A Because I was on my feet quite a bit at
10 work, it was not good for me to be on my feet. My
11 job entailed a lot of walking.

12 Q Where did you have to walk to as part of
13 your job responsibilities?

14 A Up and down the stairs, using the
15 elevator, or showing the property to potential
16 clients, walking the property.

17 Q How many occasions between January 2003
18 and April 28, 2003 or May 6, 2003 did you walk the
19 property to show it to customers?

20 A I would say a couple times a week.

21 Q Do you remember the names of any
22 particular clients that you did that with?

23 A No, I don't.

24 Q So, other than the -- let me just

1 2003?

2 A Yes, I had no restrictions for driving.

3 Q So, you testified that you were going to
4 continue for two weeks after May 6th in your
5 position as sales, conference sales, correct?

6 A Approximately, right.

7 Q You're sure about that?

8 A Yes, it was probably about a week to ten
9 days, somewhere in there.

10 Q Not a few days?

11 A Well, from the time I gave my notice until
12 the time my doctor wanted me to finish. No, it
13 wasn't a couple weeks, it was a matter of days. But
14 from the change in my position in April to the
15 middle of May, it was a couple weeks.

16 Q I see.

17

18 (Exhibit No. 13, E-mail from
19 Patricia Cosgrove to Stephen
20 Brennan Dated May 7, 2003.)

21

22 Q (By Mr. Wilgoren:) Let me show you what's been
23 marked as Deposition Exhibit No. 13. Can you
24 identify this document?

1 seat in the sales office.

2 And then some short time after,
3 another employee asked me to report to Steve in
4 his office.

5 Q Had you indicated to anyone at New Seabury
6 that you were intending to return to work on
7 October 7th?

8 A Yes, I spoke with Lee O'Shea and I spoke
9 with the administrative assistant at the time for
10 Steve.

11 Q When did you speak with Lee O'Shea?

12 A Probably about a week or two prior to
13 that.

14 Q Why did you call Lee O'Shea?

15 A To find when the exact day was that my
16 maternity leave was ended, I guess.

17 Q Why would you call Lee O'Shea regarding
18 that?

19 A Because she had the attendance record and
20 my personnel file as to when I left. And she knew
21 how much vacation time I used and personal time and
22 maternity leave time.

23 Q Tell me, as best you can recollect, the
24 full extent of your conversation between you and Lee

1 O'Shea.

2 A Just a brief conversation checking on the
3 exact day I was to return, and what maternity leave
4 time I had used and vacation time up until then, and
5 what I had remaining when I returned.

6 Q What, if anything, did Lee O'Shea say to
7 you?

8 A She stated to me what I had used for
9 maternity leave and vacation and personal time.

10 Q Did she tell you when you should be
11 reporting back to work?

12 A I believe she confirmed with me, when I
13 had given her the date, she said, "That should be
14 the day that you should be returning."

15 Q That was October 7th?

16 A I believe so, yes.

17 Q Now, you spoke to, you said, Steve
18 Brennan's administrative assistant?

19 A Yes.

20 Q What was that person's name?

21 A At the time it was Jean Civitolo.

22 Q And you called Jean Civitolo on the phone?

23 A I actually called Steve, but Jean picked
24 up the phone.

1 Q Tell me, if you will, the full extent of
2 your conversation with Jean Civitolo on that day.

3 A I asked if Steve was in and she said he
4 wasn't in.

5 She asked if there was a message, and
6 I said I just wanted to touch base with Steve and
7 let him know that I'm going to be returning from
8 maternity leave, and that I would return on
9 October 7th, and I just wanted him to confirm that
10 with me; to please call me back about returning.

11 Q Why did you call Steve Brennan?

12 A He's the general manager. I assumed that
13 he would report it to my supervisor.

14 Q Well, your supervisor -- you mean Jen
15 Perry?

16 A Yes.

17 Q She was your supervisor when you were
18 conference sales, correct?

19 A Right.

20 Q Did Mr. Brennan call you back?

21 A No.

22 Q So, I think, before we digress back, you
23 had been told that Steve Brennan wanted to see you?

24 A Yes.

1 Q You were at the country club?

2 A Yes.

3 Q You got in your car and drove to

4 Mr. Brennan's office?

5 A Correct.

6 Q You had a meeting with Mr. Brennan?

7 A Yes.

8 Q In his office?

9 A No.

10 Q Where was the meetings?

11 A Lee O'Shea's office.

12 Q Who was present?

13 A Lee O'Shea, Steve and myself.

14 Q And tell me everything everyone said at
15 that meeting.

16 A I remember waiting for Steve in Lee's
17 office, and Steve had come in and I informed him I
18 was back to work today, and that Jennifer wasn't
19 aware I was coming back.

20 And he stated, "We have nothing for
21 you." And I said, "What do you mean, you have
22 nothing for me? I'm returning from maternity leave;
23 you've got to have a job for me."

24 And he said, "You never accepted the

1 position as administrative assistant in the country
2 club." I said, "I didn't accept that position.
3 That position was offered to Michelle O'Brien. You
4 offered me the administrative assistant in the sales
5 office, which I accepted prior to my maternity
6 leave."

7 And he said, "Well, that position
8 isn't available anymore." And I said, "Well, I
9 understand that when I went out on maternity leave
10 someone was asked to fill in the position while I
11 was on maternity leave, because it was a busy time
12 of year. And she was contacted and did so.

13 And Laura Lee, who filled in, was
14 leaving in another two weeks after I returned to
15 work. And it seemed to me that at the time that I
16 returned that Laura Lee was in a perfect position to
17 train me when I returned."

18 And he said, "Well, that position is
19 not available anymore," again. And I said, "It's
20 got to be available. You offered me the job and I'm
21 coming back to work."

22 And he said, "I'm telling you we have
23 nothing for you." I said, "Well, you have to have
24 something for me." I said, "I accepted the

1 not you had complied with the New Seabury policy
2 about returning to work from pregnancy leave?

3 A No.

4 Q No discussion whatsoever?

5 A No.

6 Q So then, did you, in fact, return to work
7 the next day?

8 A Yes, I did.

9 Q What happened?

10 A I returned to the country club, and Steve
11 had said I should wait for John Shea, who was in
12 communications, to give me a project to do. And I
13 waited for an hour or two, whatever, and he showed
14 up and said to come down to the warehouse.

15 And Steve had mentioned there were
16 some old files that they were trying to get on disk
17 or something that needed to be scanned that had been
18 sitting there and nobody had a chance to do it. And
19 the person who was doing it was no longer employed
20 there.

21 Q Did they tell you who the person who had
22 previously done it was?

23 A I think it was Robin. She used to work at
24 the health club. And when the health club was

1 closed, she did that in her spare time.

2 Q What was Robin's position or job title, do
3 you know?

4 A I really don't know.

5 Q Would it surprise you to learn that she
6 was an administrative assistant?

7 A As far as I know, she worked as the health
8 club -- not coordinator, but she worked at the desk
9 at the health club and she worked in reservations.

10 Q Did she work at the beach club at some
11 point in time?

12 A Oh, yes. I think she did work at the
13 beach club at one point, yes.

14 Q Were you aware that she was the
15 administrative assistant at the beach club?

16 A Yes, and then, I believe, in off-season
17 when everything closed down, she did some busy work.

18 Q And then got laid off?

19 A I don't know if she got laid off.

20 Q So, John Shea took you to the office area
21 in the warehouse?

22 A He asked me to meet him at the warehouse.

23 Q Now, when you say "the warehouse," where
24 particularly did you meet him? Is there an office

1 in the warehouse?

2 A There are partitioned offices in the
3 warehouse.

4 Q So you weren't in the warehouse itself,
5 you were in one of these partitioned offices?

6 A Right, which is inside the warehouse.

7 Q All right. And what happened when you got
8 there?

9 A He basically showed me a box of files and
10 said that they needed to be scanned. And he
11 instructed me on how to use the computer and
12 scanner, and said it was a very long and slow
13 process.

14 Q Now, where was Mr. Shea's office; do you
15 know?

16 A Directly behind the partitioned office
17 that was assigned to me.

18 Q So, he was in the office next to your
19 office?

20 A It wasn't so much an office, it was a
21 communications room with all kinds of --

22 Q Did it have a desk in there?

23 A It may have, I'm not sure.

24 Q This office that you were assigned to work

1 in, it had a desk?

2 A It had a desk, yes.

3 Q Okay.

4

5 (Exhibit Nos. 14 and 15,
6 Photographs of Warehouse
7 Facility.)

8

9 Q (By Mr. Wilgoren:) Ms. Cosgrove, let me show
10 you what's been marked as Deposition Exhibits No. 14
11 and 15 and ask if you can identify these documents.

12 A They are pictures of the warehouse
13 facility.

14 Q And show me where the picture is of your
15 office where you worked.

16 A The top photo.

17 Q On the top?

18 A Yes, top photo here, just inside the door
19 there.

20 Q Inside the door. So we really don't see
21 your office except for peeking through the door?

22 A Correct.

23 Q You didn't work in this outside area at
24 all, did you?

1 A No.

2 Q In fact, you never set foot in that
3 outside area, did you?

4 A Yes, I did.

5 Q What purpose did you have for going in
6 that --

7 A That was the only way I could get to my
8 office, was to walk through that area.

9 Q Oh, I see. How about the bottom picture,
10 what is that?

11 A That's the area that I walked through.

12 Q Isn't it true that you were given a key to
13 a separate entrance directly to your office?

14 A No.

15 Q That's not true?

16 A That is not true.

17 Q Anyone who said that would be telling a
18 lie?

19 A I was given a key, but not to the building
20 itself.

21 Q Well, let me call your attention to
22 Deposition Exhibit No. 14, the picture of the
23 exterior of the warehouse, correct?

24 A Yes.

1 Q You didn't park here, did you?

2 A Yes.

3 Q Isn't it true that you went around the
4 side of the building and parked directly by a door
5 that entered directly to your office?

6 A No, I never did that.

7 Q If anyone said that you did, they would be
8 lying?

9 A Yes.

10 Q Now, there's a picture of a toilet here.

11 A Yes.

12 Q What is this picture of?

13 A That's the rest room used for male
14 employees and myself.

15 Q In fact, you never used this rest room,
16 did you?

17 A I tried not to.

18 Q You never used this rest room, did you?

19 A Yes, I did.

20 Q You're sure of that?

21 A Yes.

22 Q In fact, you were allowed to go to the
23 administration office to use the rest room
24 facilities there, were you not?

1 A Yes, I was.

2 Q In fact, that's where you -- when you had
3 to use the rest room facilities, that's where you
4 went, you didn't go to this toilet?

5 MS. SCHWAB: Objection.

6 She testified she did go to that toilet.

7 THE WITNESS: No, I did use that rest room
8 in the warehouse.

9 Q (By Mr. Wilgoren:) You could also go to the
10 country club and use the rest room facilities there?

11 A Yes.

12 Q No one objected to you getting in your car
13 and driving a quarter mile away to use those
14 facilities any time you want, did they?

15 A No.

16 Q Was Mr. Shea your supervisor in this
17 project when you were scanning the documents?

18 A No, I would say he was not.

19 Q Who was supervising your work?

20 A No one that I can recall.

21 Q So, Mr. Shea wouldn't review the progress
22 you made in terms of the amount of documents you
23 scanned?

24 A No.

1 allowed to.

2 Q Sometimes if you talked to Tanya maybe it
3 was a little longer?

4 A Yes.

5 Q Maybe as much as a half hour?

6 A It could have been.

7 Q Could have been a half hour, twice a day?

8 A It could have been; it could have been
9 less.

10 Q Also, there was also heat in that office,
11 is that correct?

12 A There was heat, yes.

13 Q And you also were provided with a space
14 heater in addition?

15 A Yes, it was a supplement.

16 Q And you also were provided with a
17 refrigerator, were you not, to store the breast
18 milk?

19 A Yes, after some time I was, yes.

20 Q After how much time?

21 A Maybe a week or two.

22 Q Who did you -- did you make a request for
23 a refrigerator?

24 A I believe I requested a refrigerator, yes.

1 a box.

2 Q Your job duties didn't require you to go
3 in the warehouse area of that building for any
4 reason, did they?

5 A Other than to receive any deliveries and
6 walk to and from my office and use the rest room or
7 the copy machine, no.

8 Q How many occasions did you receive
9 deliveries?

10 A Maybe once a week or so.

11 Q How many times did you use the copy
12 machine?

13 A On occasion, maybe two or three times.

14 Q So you -- let me -- just so I understand,
15 you were given a key, but you never knew what it was
16 for?

17 A No, I was given a key and I knew what it
18 was for.

19 Q What was it for?

20 A It was to enter the warehouse itself. The
21 main entrance of the warehouse.

22 Q And that's the only way you ever entered
23 or left your office was walking through the
24 warehouse?

1 A Yes.

2

3 (Exhibit No. 16, Job Description
4 Prepared by Patricia Cosgrove.)

5

6 Q (By Mr. Wilgoren:) I just want to be sure I'm
7 clear on this point. Except for the couple of times
8 when you got deliveries and the occasion or two when
9 you went to the copier, all of the work you
10 performed scanning the documents was done in a
11 separate office partitioned off from the warehouse?

12 A Yes, it was partitioned within the
13 warehouse.

14 Q Let me show you Deposition Exhibit No. 16
15 and ask if you can identify this document.

16 A That was the job description I was asked
17 to prepare for the job I was performing prior to my
18 maternity leave, so that it could be passed along to
19 the employee who was going to fill in for me while I
20 was out on maternity leave.

21 Q You weren't performing the administrative
22 assistant job prior to your maternity leave, were
23 you?

24 A No, not fully, no.

1 Jennifer Perry and the other sales staff as to what
2 they needed the administrative assistant to
3 undertake on a day-to-day basis.

4 Q Who asked you to prepare this document?

5 A Jennifer Perry.

6 Q Who did you give it to?

7 A I believe I gave it to Jennifer Perry, and
8 I posted one in the sales office.

9 Q Do you have any experience in designing
10 job descriptions?

11 A No.

12 Q Have you ever seen job descriptions?

13 A In the past, yes, from other employers.

14 Q Typically, they have a statement: All
15 other duties assigned by the supervisor.

16 MS. SCHWAB: Objection.

17 THE WITNESS: They may. I'm not aware of
18 that..

19 Q (By Mr. Wilgoren:) That was not anything that
20 was approved by New Seabury or -- this was something
21 you created?

22 A Yes, at the request of my supervisor.

23 Q So, your view that scanning documents is
24 not part of the administrative assistant's job is

1 Q (By Mr. Wilgoren:) What was objectionable to
2 you, or what did you find that was illegal about
3 working in solitude?

4 A I believe it wasn't a position that was at
5 all similar to the position I left.

6 Q What do you base that on?

7 A The duties that I was performing.

8 Q The fact of the matter is, you weren't
9 working in solitude, were you?

10 A For most of the day I was, yes.

11 Q There were two other employees that were
12 working in that office as well, were there not?

13 A Not on a regular basis, no.

14 Q What about John Shea, wasn't he working
15 there?

16 A On occasion.

17 Q How about Jeff Fuller, where was he?

18 A On occasion he was in the building.

19 Q Where were the files that you were
20 scanning, they were in this loft?

21 A I think that's where they were.

22 Q Do you know how many boxes of files?

23 A I have no idea.

24 Q Hundreds, maybe?

1 A Yes, seasonal employees.

2 Q And you were advised by Steve Brennan that
3 the job you accepted as administrative assistant was
4 a seasonal job?

5 A I was advised?

6 Q Yes.

7 A No, I was not.

8 Q Now, calling your attention to October 31,
9 2003, did you have a meeting with Mr. Brennan that
10 day?

11 A Yes, I did.

12 Q How did that come about?

13 A He asked me to see him at the end of the
14 workday. I reported to his office just before 5:00
15 and he informed me that the administrative position
16 that I had filled would be ending today.

17 Q Did he tell you you'd been laid off?

18 A No.

19 Q Tell me, where did this meeting take
20 place?

21 A In his office.

22 Q Who was present?

23 A Just Steve and myself.

24 Q Tell me, as best you can recall, exactly

1 what Mr. Brennan said to you and what, if anything,
2 you said to him.

3 A I believe I may have mentioned that the
4 position I accepted was full-time year-round. And
5 he said that the position has ended today as
6 administrative assistant. I would receive any due
7 vacation time and/or unemployment that I had earned,
8 and I was to see Lee O'Shea for the information on
9 that and COBRA, my health insurance, and that might
10 have been it.

11 Q Did you say anything to Mr. Brennan?

12 A No, actually, I commented that, you know,
13 that's fine. As long as I can still get my benefits
14 that's owed to me and, you know, my vacation pay and
15 COBRA insurance.

16 Q Are you aware of other employees who had
17 been laid off at about the same time?

18 A No, not that I can recall.

19 Q You testified before that Laura Lee has
20 been working as an administrative assistant. Were
21 you aware that she was laid off on October 10th,
22 2003?

23 A No, I was not aware that she was laid off.

24 Q Do you know a woman by the name of Joan

1 was it, as you previously testified?

2 A It was unheated at one point because the
3 heater was not working properly, and that's why they
4 supplied me, after I requested, the space heater.

5 Q When was it unheated?

6 A For the first week or so I was there.

7 Q Who did you tell -- complain that the heat
8 was not working?

9 A I may have mentioned it to John Shea.

10 Q You may have mentioned it to John Shea?
11 Do you have any recollection --

12 A He was the one that brought the space
13 heater in, so I would assume.

14 Q Do you have any recollection, as you sit
15 here today, that you did or did not mention it, that
16 the heater wasn't working, to John Shea?

17 A To the best of my recollection, I did
18 mention it to him at one point.

19 Q The next paragraph, 18, is not quite
20 precise, is it? You were given the job of
21 administrative assistant after you returned from
22 maternity leave, although not the one you wanted.
23 You were given an administrative assistant job?

24 MS. SCHWAB: Objection to the term

1 upset and tried to comfort me.

2 Q When was that?

3 A Maybe a week or so after it happened.

4 Q Where did that take place?

5 A In the country club.

6 Q Where in particular?

7 A Near my office.

8 Q Now, you say that Tanya Copestik has
9 information about derogatory comments made about
10 you. What information did she have in that regard?

11 A At one point when I was in the reservation
12 center, I guess, she passed Mr. Brennan in the hall
13 and Mr. Brennan said to her, "Patricia is not to be
14 hanging around down here." And Tanya stated that,
15 "Patricia is not hanging around down here. I
16 offered her my office to pump, so that she could
17 have some privacy."

18 And he stated, "We're walking a fine
19 line here as a company, so watch what you say."

20 Q You consider those derogatory comments?

21 A Yes.

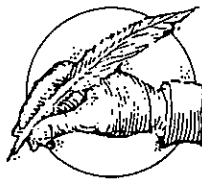
22 Q Who is Allison Counsel?

23 A She was an employee in the function setup
24 department.

Exhibit Q

O'BRIEN & LEVINE

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Patricia Cosgrove v. New Seabury Resources Management

Transcript of the Testimony of:

Stephen Brennan

January 18, 2006

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ORIGINAL

Jill K. Ruggieri 1-17609

1 Q Do you remember if you looked into whether
2 your employer at the time had a leave policy
3 for new fathers?

4 MR. WILGOREN: Objection. Relevance.

5 A No.

6 Q No, you didn't look into it?

7 A No.

8 Q When your wife became pregnant with Madison,
9 did she stop work at any time during the
10 pregnancy?

11 MR. WILGOREN: Objection.

12 A She wasn't working. She wasn't working at
13 that time.

14 Q So she went back to work after she had
15 Taylor, and then when did she stop working?

16 MR. WILGOREN: Objection.

17 A She went back to work. After the first day,
18 she said she couldn't go back. She didn't
19 want to. She wanted to stay home. She gave
20 her notice, and that was two weeks or a
21 month or whatever the notice was, she
22 stopped after that notice.

23 Q And she didn't go back to work before she
24 became pregnant with Madison?

1 Q And what about for seasonal, do you know
2 what the definition is?

3 A Temporary employment. There's no
4 definition.

5 Q And does the notation in somebody's
6 personnel file refer to the rule of thumb
7 definitions that you've used or the handbook
8 definitions?

9 A It would be the rule of thumb. It's
10 different from the -- whether they're
11 eligible for benefits or not.

12 Q Can you give me a rough estimate of how many
13 employees you have in the golf department?

14 Can you tell me how many -- let's
15 look -- let's take 2005.

16 A Mm-hmm.

17 Q How many seasonal employees you had and how
18 many full-time employees you had in the golf
19 department.

20 MR. WILGOREN: Objection.

21 When in 2005?

22 Q Well, during the whole year.

23 A Full-time, there's three.

24 Q How many seasonal?

1 A Fifty.

2 Q Fifty?

3 A Ballpark.

4 Q How about golf maintenance?

5 A Year round is ten, and there are roughly 50.

6 Q Tennis?

7 A No employees.

8 Q So what goes on in the tennis department?

9 A It's a contract. It's contracted out.

10 Q Do you know how many contracted employees
11 there are?

12 A I pay one contract.

13 Q Excuse me?

14 A I pay one contract. I don't know how many
15 they have.

16 Q How about fitness?

17 A It's contract.

18 Q Catering?

19 A Catering currently there's two full-time
20 people and total headcount probably --
21 probably exceeds 100.

22 Q And that's during the high season, during --

23 A Yes, they're all part-time type.

24 Q How about food and beverage?

1 A Food and beverage, full-time year-round is
2 three, inclusive of the kitchen.

3 Q And seasonal?

4 A It's around the same, right around 100, give
5 or take.

6 Q Lodging/housekeeping?

7 A Lodging full-time/housekeeping has either
8 three or four currently, and they get up to
9 nine or ten, including the housekeeping.

10 Q How about administration?

11 A Six -- seven full-time year-round, and then
12 there's one additional that's a seasonal.

13 Q Okay.

14 How about when you started in 2003?

15 So in January 2003, how many full-time
16 employees were there in the golf department?

17 A I don't remember at this point.

18 Q Any rough estimate?

19 A No. I'd have to look back to see what it
20 was.

21 Q Do you remember if it was more or less than
22 three full-time?

23 A It was more.

24 Q Do you remember if it was -- how many more,

1 approximately?

2 A It was a few more. I don't honestly
3 remember.

4 Q Okay.

5 Could it have been as many as ten
6 more?

7 A I wouldn't think so, no.

8 Q Five more?

9 A Could be somewhere in that ballpark.

10 Q And in the high season in 2003, do you
11 remember how many seasonal employees there
12 were in the golf department?

13 A No, I couldn't tell you what the number is.

14 Q Was it more than 50?

15 A Yes.

16 Q Was it ten more than 50?

17 A I don't know. I don't recollect.

18 Q How about in golf maintenance, how many
19 full-time employees were there in
20 December 2003?

21 A I believe there were almost 15 at that point
22 in that department.

23 Q How about seasonal in the summer of 2003?

24 A They were a little bit larger than they were

1 in '04.

2 Q How about tennis, was tennis contracted out
3 in 2003?

4 A No. There was -- they were all just
5 summertime help, maybe four or five people.

6 Q How about fitness?

7 A Two or three people, part-time.

8 Q When -- when did you start contracting out
9 tennis and fitness?

10 A Fitness was in '03. Tennis was for the '04
11 season.

12 Q So fitness the summer of '03 was contracted?

13 A Yes.

14 Q How about catering, how many full-time
15 people were there in January '03?

16 A I -- I don't know exactly.

17 Q More than two?

18 A Yes.

19 Q As many as ten?

20 A I wouldn't think it would be that high, no.

21 Q How about how many seasonal employees in
22 mid-2003 in catering?

23 A Over 100.

24 Q Any significant difference from the over a

1 hundred that are currently employed
2 seasonally in catering?

3 A Amount of hours.

4 Q How about food and beverage, how many
5 full-time in January '03?

6 A I want to say about six.

7 Q And how many seasonal?

8 A There were over a hundred at that point.

9 Q Lodging and housekeeping, full-time
10 employees in January '03?

11 A There were -- lodging there were at least
12 three. In housekeeping, there was at least
13 ten.

14 Q Were they separate departments at the time?

15 A They reported up through lodging, so I
16 wouldn't call them separate.

17 Q How many seasonal employees in mid-2003 in
18 lodging and housekeeping?

19 MR. WILGOREN: Mid-2003?

20 Q Mid-2003.

21 A I believe we took lodging down to three or
22 four, and housekeeping ended up being maybe
23 12 that summer.

24 Q How about admin full-time in January 2003?

1 A I think there was about eight.

2 Q How about seasonal in mid-2003?

3 A Would have been just one.

4 Q How have the revenues at New Seabury changed
5 from when you started to now?

6 A The lodging revenues have been reduced
7 dramatically due to the fact that in '02
8 there was 100-plus units that were in the
9 rental pool.

10 Today we have -- on a given day we
11 might have 20 to rent. In excess of a
12 million dollars came out of the lodging
13 revenues.

14 Q And what was the reason for the reduction in
15 the number of units?

16 A We were able to sell off the existing
17 Maushop units, M-A-U-S-H-O-P.

18 Q Is that a region?

19 A It's a section.

20 Q Any other reason that there was such a
21 reduction in units?

22 A Yes, it was not profitable.

23 Q So how have profits changed, then, in the
24 lodging area?

1 MR. WILGOREN: Objection. Assumes
2 that there were profits at a certain point
3 in time.

4 A The lodging by itself is nearly a breakeven
5 operation now, comparative to losing
6 hundreds of thousands of dollars.

7 Q What other changes have there been in the
8 revenues since you started?

9 A The dues line has increased dramatically.
10 The initiation fees have increased
11 dramatically. The food and beverage and
12 catering sales have stabilized with
13 reasonable growth. And the bottom line has
14 increased from 800,000 to 2.7 million.

15 Q What's the bottom line?

16 A Bottom line's EBITDA.

17 Q I was waiting for that term to come back
18 into play.

19 What type of information do you -- in
20 2005, what type of information did you give
21 to New Seabury employees about financials,
22 revenues, bottom line?

23 A 2005, the employee training, they get a
24 broad-brush stroke this is how much people

1 A The Villa Rental Program was an opportunity
2 for homeowners to be able to participate in
3 our rental program.

4 They would give us X number of weeks,
5 designate the weeks. In lieu of that, we
6 would attempt to rent those out through our
7 lodging program, and they would get a
8 percentage of the income from it, and we'd
9 get a percentage.

10 Q What percent would New Seabury keep, if you
11 remember?

12 A It's 50 percent.

13 Q And was that program in effect when you
14 started at New Seabury?

15 A Yes.

16 Q Did it end at some point?

17 A Yes.

18 Q What -- at what period did it end?

19 A Basically went away at the end of '03,
20 beginning of '04.

21 Q So in '04, did you rent any units through
22 the Villa Program?

23 A They would have been a couple of the
24 existing Secor [ph.] units. Where our units

1 are, they're quarter shares, so they could
2 put their quarter shares in with our quarter
3 shares because we were already maintaining
4 it.

5 Q Other than that, any other --

6 A Not outside of that.

7 Q Did you -- were you involved in the decision
8 to end the Villa Program?

9 A Yes.

10 Q And what were -- and who else was involved
11 in that decision?

12 A Tanya Copestick had written the budget two
13 ways, with the Villa rental program and
14 without it, and it came out black and white.

15 Q When did Tanya Copestick write the two
16 budgets?

17 A Would have been in the fall of '03.

18 Q So what was the specific reason, then, for
19 ending the program?

20 A It was not profitable.

21 MS. SCHWAB: Why don't we take about
22 a five-minute break, if that's all right.

23 MR. WILGOREN: Sure.

24 (Recess.)

1 golf -- director of golf was demoted and
2 moved him into the superintendent position.

3 The superintendent was demoted from
4 superintendent to assistant superintendent.
5 And the golf pro was demoted to the
6 instructor of golf.

7 At that point, I had to hire a head
8 golf professional.

9 Q And when was that?

10 A That -- I think he came on board in May,
11 roughly.

12 Q Is that a seasonal position?

13 A That is a year-round position.

14 Q What was your involvement in hiring the head
15 golf pro?

16 A Advertising, interviewing, going through the
17 whole process.

18 Q Did you make the final selection?

19 A Yes, I did.

20 Q Who is the person that you hired?

21 A Brendan Reilly.

22 Q What other -- let's focus on permanent or
23 full-time people.

24 What other full-time nonseasonal

1 Q What positions did you promote them to?

2 A Controller and assistant controller.

3 Q What's Phyllis's last name, I'm sorry?

4 A D'Eramo

5 Q D'Eramo.

6 Any other people from outside hired
7 in permanent positions in 2003?

8 A That I did, no.

9 Q That you were involved in in any way.

10 A Correct.

11 Q And as to the head golf pro, before you
12 hired Brendan Reilly, did you make an effort
13 to hire -- hire that position internally?

14 A The conversation was had with Bob McGraw to
15 explain what the role and the parameters,
16 the expectation of the position was. He was
17 not interested in that. So he was the only
18 one that would have been remotely even
19 closely qualified for it.

20 Q Was he the one who was demoted from director
21 of golf, I think you said --

22 A No, from head golf professional to director
23 of instruction.

24 Q And was he at the top of the golf --

1 A Director of golf is the top. That position
2 was not replaced.

3 Q That person was demoted to what position?

4 A Superintendent. Golf course superintendent.

5 Q So you talked to McGraw -- Mr. McGraw about
6 being head golf pro, and he indicated he
7 wasn't interested?

8 A Correct.

9 Q Why was it that you approached Mr. McGraw
10 before looking outside for the position?

11 A To find out if he was really qualified, to
12 find out if he was interested. Ultimately,
13 he had had a heart attack very young and did
14 not want to -- couldn't physically maintain
15 what we were -- what we needed.

16 Q Would you have liked to have hired from
17 within, if possible?

18 A If there's an opportunity.

19 Q And what about membership director, did you
20 make an effort to hire from that position
21 from within?

22 A No.

23 Q Why did you not do that?

24 A Because you need a sales professional to do

1 Q Can you turn to page 7 of the document?

2 The last paragraph, the third
3 sentence, it says an outside salesperson was
4 hired?

5 A Correct.

6 Q Who was the outside salesperson?

7 A That was the business development person,
8 Marian Lent.

9 Q What were her duties relating to sales?

10 A She goes and develops business relationships
11 for large one-day events.

12 Q How was it that you determined that there
13 wasn't anybody internal who would be able to
14 satisfy your needs for this position?

15 MR. WILGOREN: Objection. Relevancy.

16 A In my assessment, we didn't have any
17 professional salespeople.

18 Q What was your assessment based on?

19 A The lack of sales or developing new
20 business. It was wait for the phone to
21 ring. And we get our business that way, and
22 we needed to grow the business.

23 Q Did you have any discussions with any
24 employees to determine if they might be

1 qualified to perform the duties of business
2 developer/development?

3 A At that time, no.

4 Q How about subsequent to that?

5 A Haven't needed to.

6 Q When you started at New Seabury, were you
7 involved in direct supervision of any
8 employees?

9 A Department heads.

10 Q How many department heads were there?

11 A It was eight or nine, somewhere in that
12 vicinity.

13 Q Were you involved in direct supervision of
14 any other employees?

15 A Department heads had direct -- well, the
16 accounting staff, the controller was
17 obviously there, worked directly with the
18 accounting staff.

19 There were many renovations in the
20 accounting process that had to happen, and
21 then I had an administrative assistant that
22 reported directly to me.

23 Q When you came on in part to do this
24 turnaround, who else was involved in the

1 turnaround?

2 MR. WILGOREN: At what point in time?

3 Q When you started, who else was involved in
4 affecting the turnaround?

5 A Well, initially Mark O'Neil was brought in
6 as a consultant and was retained for a
7 period of time, I don't know, I guess 9
8 months, 12 months, something like that. He
9 was there as well.

10 He wasn't there. He was involved as
11 well.

12 Q Can you explain your role as compared with
13 Mark O'Neil's role?

14 A Mark was a consultant hired by American Real
15 Estate Partners to basically get a team in
16 place -- me -- to, in effect, get the
17 properties at a level of profitability and
18 have it amenitized to the point that it was
19 ready when we started building homes.

20 Q What -- after getting you in place, what
21 other involvement did Mark O'Neil have?

22 A Reviewed financials, periodic visits, have a
23 second set of eyes.

24 Q Did you discuss decisions with him, things

1 that you were thinking of doing?

2 A Yes.

3 Q Did you discuss employment-related decisions
4 with him?

5 MR. WILGOREN: Objection. Vague.

6 A I would say yes, we discussed everything
7 from the, you know, budgeted dollars to
8 efficiencies of departments.

9 Q You mentioned before that you talked with
10 department heads about reducing headcount.

11 Were you involved in all of the
12 decisions relating to what specific
13 employees to lay off or terminate?

14 MR. WILGOREN: Objection.

15 A I would -- you can't say all.

16 Q Were you involved at all in decisions as to
17 individual employees?

18 A Some.

19 Q What employees would you be involved in the
20 decisions?

21 A It would be more of -- as an example, the
22 chef tried to figure out how he could pare
23 down for the off season and how to do it.
24 Counseled him on that, ways to become more

1 efficient, doing it without the bodies.

2 Q And what things did you talk about with the
3 chef relating to that?

4 A Basically being able to finish your what we
5 call winter work. It's the deep clean in an
6 efficient time and manner, not to cast it
7 out over a period of the wintertime and
8 months.

9 We closed the restaurant completely
10 for six weeks to enable that. It would be
11 to walk through and challenge every position
12 as to why do you need him when we don't have
13 any business going on.

14 Q So would you go through each specific person
15 and say what are they doing? Why do you
16 need them?

17 A I wouldn't say each person. They would come
18 with a recommendation. If it was what I
19 would deem as a more relevant position, I
20 would be more involved. If it was a less
21 relevant position, I would be less involved.

22 Q Did each department head come to you with a
23 recommendation in terms of staffing
24 decisions during that time period?

1 A There was a discussion with each department
2 head.

3 Q And what would you talk about during the
4 discussions?

5 A What they need to do to maintain, be
6 prepared for the spring, and doing it as
7 efficiently as possible with as much
8 cross-over as possible.

9 Q And would you have to sign off on every
10 staffing decision that was made?

11 A Ultimately, yes.

12 Q Was there a deadline that you gave to each
13 department head to come to you with a
14 proposal relating to staffing?

15 A No, because it was ongoing. It goes on to
16 this day.

17 Q So in 2003 -- when you started in 2003, what
18 was the first meeting that you had with the
19 department head relating to restructuring of
20 staffing?

21 A There was a department head meeting with all
22 of them, and at that point, put the
23 challenge forth on -- through the budget
24 process, establishing what they needed.

1 through position changes, either demotions
2 or transfers?

3 A The three I already mentioned. There were
4 at least five.

5 Q Okay.

6 A Six. At least six.

7 Q All right.

8 So there was Scott Nickerson, you
9 mentioned Mr. Robert McGraw, and who was the
10 other golf person that you mentioned?

11 A Dan Stone.

12 Q Dan Stone.

13 And then you said there were two or
14 three others?

15 A Wayne Kapral was terminated.

16 Q Okay.

17 I'm just talking about demotions or
18 transfers.

19 A Initially he was demoted from GM just to
20 CFO.

21 Q Okay.

22 A Ultimately to be terminated, but at that
23 point he was demoted.

24 Q Okay.

1 And then who else?

2 A Rhonda had the option of being transferred,
3 Rodgers.

4 Q Okay.

5 Anyone else?

6 A Ultimately Patricia's position was
7 eliminated and had an option to transfer.

8 Q Anyone else?

9 A That's who comes to mind right now.

10 Q Okay.

11 So those six people were either
12 transferred or demoted --

13 A Correct.

14 Q -- during 2003?

15 About how many people -- how many
16 full-time employees had their jobs
17 eliminated or terminated in 2003?

18 A I don't know. On a year-over-year basis, I
19 mean, we reduced by close to 100 bodies,
20 whether full-time or part-time. I don't
21 remember.

22 Q Okay.

23 Other than you mentioned Wayne Kapral
24 was terminated, right?

1 house in New Hampshire and sold his house.

2 MS. SCHWAB: Can I mark this as
3 Exhibit 2?

4 (Exhibit No. 2 marked for
5 identification.)

6 BY MS. SCHWAB:

7 Q This document you've handed you is a
8 three-page document with three different
9 payroll change forms.

10 Can you turn to the third page of the
11 document?

12 A Yes.

13 Q Do you recognize this document?

14 A Yes.

15 Q What is it?

16 A It's a payroll notice form.

17 Q Did you fill it out?

18 A No, Mark O'Neil did this.

19 Q And where it says change approved by, do you
20 recognize that as Mark O'Neil's signature?

21 A Yes, it is.

22 Q Okay.

23 In the reason for the change, it says
24 reevaluation of existing position?

1 A Correct.

2 Q Do you know why that -- that was checked
3 there?

4 A Because the position was changing to be a
5 larger position than what he had previously
6 had, and he didn't have an interest in
7 taking that position or maintaining in the
8 position as it was going to be restructured
9 to, as far as responsibilities.

10 Q So you would check reevaluation of existing
11 positions when an existing position changed
12 and the person doesn't accept that position,
13 then is offered a different position?

14 A It could simply be the position changed.

15 Q But in his situation, the position changed,
16 and then he took a different position?

17 A Correct.

18 Q Okay.

19 And Scott Nickerson you talked about
20 before. When was his position changed?

21 A Roughly the same time, right at the end of
22 January.

23 Q And what was his position changed -- from
24 what to what?

1 A Director of golf to golf course
2 superintendent.

3 Q Going back for a minute, I'm sorry, to
4 Mr. McGraw, were you involved in the
5 conversation with Mr. McGraw about his
6 demotion?

7 A I was involved with the -- yes, ultimately,
8 yes, I was.

9 I was initially involved in the
10 discussion of his interest in the new
11 position and what it would entail.

12 Q And what did you discuss during that meeting
13 with him?

14 A What I saw as the objectives for the
15 position and the responsibilities of the
16 position as head golf professional, as I
17 needed it.

18 Q And did you have any other discussions with
19 Mr. McGraw about his position change, other
20 than that initial conversation?

21 A I guess I need more detail on your question.

22 Q You said you were involved in seeing if he
23 was interested in the new --

24 A Correct.

1 time I said I wanted my job back ultimately
2 when that change had to be made. And it was
3 certainly fair to do that, and he's done a
4 great job for us since then.

5 Q Okay.

6 So going back to November '02, what
7 did you say and what did he say during that
8 conversation?

9 A I just said that.

10 Q You said he was very understanding, but what
11 specifically did you say to him during that
12 conversation?

13 A The initial conversation was me gaining
14 insight as to the property, how the golf and
15 golf course operations work.

16 You know, we spent half a day
17 together doing that, and from there at the
18 end of the conversation he said, I hope you
19 come aboard, you know, we have issues, we're
20 a sinking ship; and, you know, ultimately,
21 you know, as I stated when I first took this
22 position, I just want my position back, I
23 understand when it's time to do that.

24 Q And you said he said, you know, I hope you

1 come aboard. We're a sinking ship.

2 What had you said about your general
3 role?

4 A Nothing. I was coming to view it for
5 O'Neil, for another set of eyes.

6 Q So how did he -- was it your impression that
7 he thought you were coming to restructure
8 the company and -- but make it more
9 profitable?

10 A Oh, there's no question he understood that.

11 Q And how did he understand that?

12 A He's intelligent.

13 Q Did you say something to him about that?

14 A Not in that visit.

15 Q Previously had you?

16 A That was the first time I had ever met him.

17 Q When is the next time you met Mr. Nickerson?

18 A When I started.

19 Q And when was the next conversation that you
20 had had about his position and his change of
21 position?

22 A Conversation was probably the third week of
23 January, before I got there.

24 Q And what was the conversation? What did you

1 say during that conversation?

2 A That we're going to move you back to the
3 superintendent position. Dan at the same
4 time will be moving back to the assistant
5 superintendent position, and, you know,
6 let's go forward, make it the best we can.

7 Q And what did he say in response?

8 A He goes, Hurry up and get here.

9 Q And how would you characterize the change in
10 position from director to superintendent?

11 A It changes from overseeing the golf course
12 and all of golf to simply overseeing --
13 "simply" is a poor term, but to overseeing
14 the golf courses only.

15 Q Would you characterize it as a demotion?

16 A Absolutely.

17 Q And you mentioned that he wanted to be
18 returned to the director of golf operations?

19 A No.

20 Q Oh, I thought you said -- I misunderstood.

21 I thought you said the first
22 position -- the first discussion you said he
23 wanted to be returned to his position?

24 A As golf course superintendent.

1 Q When was he golf course superintendent?

2 A Prior to being promoted to director of golf
3 operations.

4 Q And he wanted to be returned back to his
5 previous position?

6 A That's correct.

7 Q I understand.

8 Is Mr. Nickerson still working at New
9 Seabury?

10 A Yes, he is.

11 Q And what's his position?

12 A Golf course superintendent.

13 Q And on this change of status form, do you
14 have that -- that should be this -- I
15 believe the second page in the exhibit?

16 A Yes.

17 Q Did you fill this form out?

18 A I did not.

19 Q Have you seen it before?

20 A Yes.

21 Q Do you know who filled it out?

22 A I believe Mark O'Neil did.

23 Q Okay.

24 And it says change in position and

1 responsibilities?

2 A That would be correct.

3 Q And we talked already about how his position
4 had changed.

5 Okay. How about Dan Stone, when is
6 the first time that you talked to Dan Stone
7 about a position change?

8 A Probably not until end of February.

9 Q And are you basing that on the fact that the
10 document is dated March 5, '03?

11 A No, it was just -- it was after the fact.

12 Q After what fact?

13 A After the fact of me getting there and
14 getting my feet on the ground.

15 Q And what was the conversation that you had
16 with Mr. Stone, the first conversation?

17 A Scott Nickerson had the initial conversation
18 with him, and then I explained the salary
19 change.

20 Q What's your understanding of what
21 Mr. Nickerson said to Dan Stone?

22 A I don't know. I wasn't there.

23 Q And so did you come in on a meeting that
24 Mr. Nickerson and Mr. Stone were having?

1 A No.

2 Q You had a separate meeting --

3 A Yes.

4 Q -- with Mr. Stone?

5 And what did you say in that meeting
6 to him?

7 A I just wanted to explain the change in the
8 salary, the timing of it. Went through
9 that, and that was the conversation.

10 Q What was -- what was Mr. Stone's reaction?

11 A Well, people aren't generally happy when
12 they take a \$13,000 pay cut, but he
13 understood, and it obviously worked well
14 since he's still there doing a good job for
15 us.

16 Q Is he still in the same position?

17 A He is.

18 Q Did you explain during the meeting that
19 there was a restructure generally of New
20 Seabury at the time?

21 A No, we talked about the department.

22 Q The golf department?

23 A Golf course, golf department, yes.

24 Q And this form, the first page of Exhibit 2,

1 A No, there's not.

2 Q Who performs the responsibilities that
3 Mr. Kapral was to perform as CFO?

4 A The controller.

5 Q You mentioned before that Rhonda Rodgers was
6 somebody who had an option of a transfer in
7 2003.

8 Can you explain what that option was?

9 A We offered her the option to take over the
10 lodging component.

11 Q And what had her previous position been?

12 A Membership sales.

13 Q Did you have a discussion with her giving
14 her that option?

15 A Yes.

16 Q Was there anyone else present?

17 A I don't recall.

18 Q Do you remember -- did you say anything to
19 Ms. Rodgers at that meeting about the reason
20 for the transfer?

21 A The new membership director was already in
22 place, which she was aware of. She was a
23 quality individual that we felt could help
24 the team.

1 you say to Ms. O'Brien?

2 A I just said that unfortunately with the
3 changes that we've gone through, as you're
4 aware, we have very little real estate
5 sale -- to sell, excuse me; that the
6 fixed-asset responsibilities that she had
7 were going as they should have all along to
8 the assistant controller, and we didn't have
9 a need for that position any longer.

10 Q And --

11 A I'm sorry.

12 Q Go ahead.

13 A You know, since then, we've had the
14 opportunity to have her explore other
15 options with us, and it hasn't worked out.

16 Q What do you mean by that?

17 A There was a position open in real estate
18 when we went back into the real estate
19 aspect of life, and so she had the
20 opportunity to see if she was interested in
21 that. She decided she wasn't.

22 Q When was that?

23 A Sometime in '04.

24 Q And getting back to the original termination

1 that you know of?

2 A Not that I'm aware of.

3 MS. SCHWAB: Can I mark this
4 Exhibit 3?

5 (Exhibit No. 3 marked for
6 identification.)

7 BY MS. SCHWAB:

8 Q Mr. Brennan, do you recognize the document
9 that's been marked as Exhibit 3?

10 A Yes.

11 Q And what is that document?

12 A It's Michelle's notice of maternity leave.

13 Q And there where it says Stephen Brennan and
14 there's a signature above that, is that your
15 signature?

16 A Yes.

17 Q Do you remember receiving this document?

18 A I don't remember receiving it, but obviously
19 I did.

20 Q And do you now -- looking at the document
21 now, do you remember if you received this
22 document before Ms. O'Brien was terminated?

23 A Yes.

24 Q Going back to your termination discussion

1 with her, do you now remember whether
2 anything related to her pregnancy or her
3 request for leave came up during that
4 termination meeting?

5 A No.

6 Q No, you don't remember?

7 A I don't believe anything did.

8 MS. SCHWAB: I'd like to mark this as
9 Exhibit 4.

10 (Exhibit No. 4 marked for
11 identification.)

12 BY MS. SCHWAB:

13 Q Mr. Brennan, do you recognize this document?

14 A I recognize the form.

15 Q Have you ever seen this document with this
16 data before?

17 A I may have. It doesn't ring a bell.

18 Q What -- looking over this document, what
19 information does it appear to communicate --

20 MR. WILGOREN: Objection. The
21 document speaks for itself.

22 Q -- to you?

23 A Basically looks like Wayne Kapral
24 transferred Michele out of the club

1 means?

2 A Department change. No longer existed.

3 Q And would that be department 330 that no
4 longer existed?

5 A Correct.

6 Q And actually going back for a moment to
7 Exhibit 4, at the bottom it says change
8 approved by, and that looks like Wayne
9 Kapral's signature?

10 A That's correct.

11 Q Do you recognize the signature under change
12 authorized by?

13 A Yes, Wayne Spencer.

14 Q Wayne Spencer?

15 A Yes.

16 Q And that was the controller, right?

17 A At the time it was the assistant controller.
18 There was no controller. He was the
19 assistant controller. He was promoted to
20 controller.

21 Q I understand. Okay.

22 Is there a difference in the
23 positions between controller and CFO?

24 A CFO is more global, reporting upward.

1 Q What do you mean reporting upward?

2 A Public company, so we have a CFO in
3 Manhattan, so therefore you don't have to
4 have a CFO locally. It was a duplication of
5 duties.

6 Q Did Wayne Spencer become the controller
7 after Wayne Kapral was terminated from his
8 position as CFO?

9 A That's correct, shortly thereafter.

10 Q Like within a week or so?

11 A A week, a month, somewhere in that vicinity.

12 Q Earlier we talked about Rhonda Rodgers and
13 that she was offered another position but
14 didn't take the position?

15 A Correct.

16 Q Did you have any discussion with Ms. Rodgers
17 during your conversation about offering the
18 transfer about her pregnancy or about her
19 request for leave?

20 A Conversation about it? I don't believe so.
21 I mean, I knew she was pregnant, obviously.

22 Q So did you mention it at all during this
23 meeting with her?

24 A Not that I recall.

1 leave for a period of time?

2 A No. The position was being replaced with a
3 different body on the membership sales side.
4 That was a foregone conclusion.

5 Q Her --

6 A The new --

7 Q Excuse me.

8 Her original position was being
9 replaced?

10 A Yes.

11 Q Okay. Go ahead.

12 A That was a foregone conclusion. She helped
13 train that position as far as getting that
14 person knowledgeable with the property
15 itself. He took over that position.

16 With that, we said there will be a
17 position for you. Don't know what it is
18 yet, but there will be a position for you.

19 When she came back or was about to
20 come back from maternity leave I believe is
21 the time we had the conversation of the
22 position in lodging.

23 Q Who was the person who took over her
24 original position?

1 A Bob Higgins.

2 Q And who is involved in the decision to have
3 him take over that position?

4 A I was and Mark O'Neil was.

5 Q What were the reasons for that decision?

6 A Lack of membership sales.

7 Q And did you initially have a discussion
8 with --

9 Before having a discussion about the
10 transfer, did you have a discussion with
11 Ms. Rodgers about somebody else taking over
12 her position?

13 A Yes.

14 Q What did you say about that?

15 A That somebody else was taking over the
16 position.

17 Q Did you give her reasons for that?

18 A We needed to increase the membership sales.
19 We needed to have a full complement of
20 members, and as quickly as we could.

21 Q And did you previous to that or at that
22 meeting talk with Ms. Rodgers about her
23 ability to meet your needs in that respect?

24 A To meet the needs in what respect?

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1 people who were terminated, you said you
2 thought some of the kitchen staff were
3 full-time --

4 A Correct.

5 Q -- employees.

6 How many full-time kitchen staff were
7 terminated in 2003?

8 A There were -- first they were laid off, not
9 terminated, at the beginning of 2003 for the
10 slow season, and it would have been two or
11 three, maybe four that went from being
12 full-time year-round to the chef being
13 full-time year-round.

14 Q And were those people who were laid off at
15 the beginning of the slow season --

16 Do you remember if they were hired
17 back as seasonal employees?

18 A I don't know if all of them were, but the
19 majority were.

20 Q So most of them were not exactly laid off
21 but reduced from full-time to seasonal?

22 A They were laid off for a period of anywhere
23 from a month to three months.

24 Q And you mentioned also that there were some

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1 captains who had full-time positions that
2 were ended?

3 A I believe the captains were reduced from
4 being deemed as full time to being less than
5 full time. They were -- basically became on
6 call during the off season.

7 Q Any that just had their position eliminated
8 entirely that you can remember?

9 A Not that I can think of.

10 Q Other than those kitchen staff and captains,
11 Wayne Kapral, Michele O'Brien and the
12 plaintiff, are there any other full-time
13 employees whose positions were eliminated in
14 2003?

15 A There could have been. I believe there was
16 a bartender. It was the bar manager. His
17 position was eliminated. Wasn't replaced.

18 There may have been a year-round
19 assistant food and beverage director that
20 was not brought -- was made not year-round.
21 I believe there was someone on the outside
22 golf staff that was year-round that was
23 eliminated to not be a year-round position.

24 Q Anything else?

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1 A That's what comes to mind right now.

2 Q What was the name of the bar manager?

3 A Tom -- Tommy Sullivan.

4 Q And was he hired into a seasonal position
5 or --

6 A No, the position was eliminated.

7 Q And he stopped working at New Seabury?

8 A Yes.

9 Q And then the assistant food and beverage
10 person, do you remember that person's name?

11 A I don't remember the name.

12 Q But that person wasn't eliminated, just
13 moved down to seasonal?

14 A Right.

15 Q And the same with the outside golf person?

16 A Yes.

17 (Exhibit No. 8 marked for
18 identification.)

19 BY MS. SCHWAB:

20 Q Do you recognize the document marked as
21 Exhibit 8?

22 A I do.

23 Q What is it?

24 A It's a termination report.

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1 when we first got there, converted to
2 part-time positions.

3 Q So if somebody was terminated in this fourth
4 quarter of the year and they were
5 necessarily seasonal employees --

6 A They were probably seasonal employees.

7 Q Because the termination of full-time
8 employees happened when?

9 A Really the early part of 2003.

10 Q And then also in early 2003 happened -- the
11 people whose positions were reclassified
12 from full-time to seasonal?

13 A Generally happened at that point.

14 Q So can you identify anybody on this list who
15 was terminated from a full-time position at
16 this time?

17 (Witness read document.)

18 A Mary Polino.

19 (Witness read document.)

20 Q Is that it?

21 (Witness read document.)

22 A I don't recognize anybody else as being
23 full-time from the list.

24 Q Mary Polino is the person we had spoken of

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1 different people have gotten?

2 A I don't believe there would be anything
3 different. It would be whatever the policy
4 states.

5 Q Does New Seabury set requirements for how
6 frequently somebody has to check in during
7 their leave?

8 A Not at all.

9 Q So is there any requirement to call a
10 certain number of times during the leave
11 or --

12 A There is no.

13 Q -- as the leave is coming to an end?

14 A There is not.

15 MR. WILGOREN: You're talking about
16 in the case of pregnancy leave or --

17 MS. SCHWAB: Well, he's testified
18 that they're one and the same. There's
19 been -- the only people who have asked for
20 leave have been pregnancy leave, so it
21 doesn't seem to require a differentiation.

22 A There was -- and I don't know if this
23 pertains to one of the questions you asked.

24 Jeff Fullerton was out for an

1 as well outside that department but in the
2 same location.

3 Q And what about during his second leave?

4 A Same.

5 Q Is there a set procedure for reinstating an
6 employee who comes back from a family leave
7 or a disability leave?

8 A No.

9 Q Is there a process for being contacted
10 beforehand?

11 A No.

12 Generally an employee would contact
13 us because they're excited about coming
14 back.

15 Q And after an employee contacts you about
16 coming back, what next step is taken?

17 A Nothing. They're reactivated in the system
18 to whatever their status was.

19 Q Who is responsible for recording the date of
20 when somebody's supposed to come back from
21 leave?

22 A Today it would be the HR/payroll department.

23 Q What about in 2003?

24 A Would have been payroll and HR department.

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1 Q Lee O'Shea?

2 A Mm-hmm.

3 Q And would Ms. O'Shea inform you when
4 somebody was coming back from leave?

5 A She should have.

6 Q Like a little bit beforehand, telling you
7 somebody is about to come back from leave?

8 A She should have.

9 Q And did she do that in case of Jennifer
10 Perry?

11 A No, Lee was already gone. Jennifer Perry
12 was in contact.

13 Q Did she do that with Jeff Fullerton?

14 A No, Jeff was in contact with us directly.

15 Q Excuse me?

16 A Jeff was in contact with his supervisor
17 directly.

18 Q Was he in contact with you at all about
19 returning from leave?

20 A Just stopping in to say he was excited to
21 get back.

22 Q Who was his supervisor?

23 A Dave Hatfield.

24 Q For full-time employees at New Seabury,

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1 Q Do you remember when you first met Patricia
2 Cosgrove?

3 A No.

4 Q Do you remember when you first heard of
5 Patricia Cosgrove?

6 A No.

7 Q Well, what's your first recollection of
8 either hearing of her or having some
9 interaction with her?

10 A Probably on the headcount list that we had
11 that I looked at in October or November,
12 prior to my starting, saw the name.

13 Q And did you -- was it anything other than
14 just seeing a name on a list?

15 A Name on a list with a department, number of
16 people in the department, made it a
17 question.

18 Q Excuse me?

19 A Made it a question for me.

20 Q What was the question?

21 A Why we have so many people in this role.

22 Q And what role was that?

23 A The cross-over between catering, catering
24 sales and lodging.

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1 Q What was the headcount list? You said you
2 saw her name on a headcount list before you
3 came.

4 What was that list?

5 A It was a headcount list.

6 Q And what information did it have on it?

7 A Position, name. That's what I can say
8 definitively was on it.

9 Q Do you know who generated the list?

10 A I would -- no, not for a fact. I assume it
11 came through accounting.

12 Q Was it something that you requested?

13 A It was something that was given to me.

14 Q Who gave it to you?

15 A It came from Mark O'Neil.

16 Q Excuse me?

17 A It came from Mark O'Neil.

18 Q And when you saw the headcount list, had a
19 question, any discussions about Ms. Cosgrove
20 at that time?

21 A Not as a -- just as a number within the
22 department.

23 Q And what conversations did you have about
24 her as a number?

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1 Q Do you remember any substance of your
2 conversation with Lee O'Shea?

3 A No. Patricia's pregnant, can you file this.

4 Q Anybody else you might have talked about it
5 with?

6 A I mean, nothing comes to my mind.

7 Q Do you remember if you talked to
8 Ms. Cosgrove after receiving this document?

9 A I don't recollect a conversation.

10 Q At the bottom of the document, her last
11 sentence says, "I am entitled to a 12-week
12 leave, which upon return I'm entitled to the
13 same position I left or a similar position
14 with the same level pay and length of
15 service."

16 Did you ever discuss that line from
17 the document with anybody?

18 A No, it's basically what our policy says.

19 Q And you signed the document.

20 Did you agree to her characterization
21 of the policy

22 A Yes. I look at it as more of whatever our
23 policy was is what we'd follow. Because she
24 wrote the document didn't mean this was a

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1 stated here.

2 Q And any conversation about her going on
3 leave?

4 A No.

5 Q So what did you say to -- and when you
6 talked about --

7 Before talking to Ms. Cosgrove, you
8 said you planned to eliminate her position.

9 Did you come up with any substitute
10 position to put her in at that time?

11 A At that time, it looked as if there would be
12 the opportunity for an administrative
13 position in catering sales.

14 Q And can you explain what that position would
15 be?

16 A It would be an administrative assistant with
17 catering sales.

18 Q And at what time was that, that looked like
19 that would be available?

20 A Spring.

21 Q With whom -- before talking to Ms. Cosgrove,
22 with whom did you talk about the
23 administrative assistant position in
24 catering sales?

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1 A Would have been the same people, Jennifer
2 Perry, that's correct.

3 Q And did you talk to all of them about
4 putting Ms. Cosgrove into this position?

5 A At a minimum, Jennifer and Mark.

6 Q And what did you say to Mark about that?

7 A There's another position, obviously will be
8 a lower paying position, but there's a
9 position right now that is available.

10 Q And what did he say to you about that?

11 A He said it works.

12 Q And what about Ms. Perry, what did you say
13 to her about the administrative assistant
14 position?

15 A Basically the same, seemed to make sense.

16 Q And what did she say to you?

17 A Seemed to make sense.

18 Q And can you elaborate at all about the
19 responsibilities of the administrative
20 assistant in catering sales?

21 A As with any administrative position, it's
22 basically answering the phone, filing, doing
23 anything that's deemed necessary for the
24 operation.

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1 away, and we had a -- an admin position
2 available if she chose to.

3 It would be a cut in pay, but if she
4 chose to, she had the opportunity to take
5 that.

6 Q Did you explain anything else about what the
7 admin position would be?

8 A Nothing comes to mind.

9 Q So just there's an admin position in
10 catering sales?

11 A She was already located there. She
12 understood what the role was, I would
13 assume.

14 Q And do you remember it -- what Ms. Cosgrove
15 said at the meeting?

16 A No.

17 She was disappointed. I remember the
18 emotion, but I don't remember what she said.

19 Q Do you remember if she accepted the admin
20 position at that point?

21 A I think she asked if she could think about
22 it.

23 Q Do you remember if she later accepted the
24 position?

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1 A Obviously the letter -- there's another
2 letter that says that she did.

3 Q At the time did you remember her accepting
4 the position?

5 A No, not until the letter was brought to my
6 attention after the fact when she returned
7 to work.

8 Q Did you discuss with Ms. Cosgrove -- did it
9 come up at the meeting that Ms. Cosgrove was
10 planning on going on maternity leave?

11 A I already knew that.

12 Q But did it come up at the meeting?

13 A Oh, I have no idea.

14 Q So you don't remember if there's any
15 discussion on how her leave would affect the
16 fact that she was given this new position?

17 A No, not during that time, as I said. I
18 mean, I did -- this is what I was doing all
19 the time. It was another person.

20 Q So you don't remember?

21 A No.

22 MS. SCHWAB: Exhibit 13.

23 (Exhibit No. 13 marked for
24 identification.)

1 full-time, part-time or seasonal.

2 Q Right.

3 A You could be full-time; you could be
4 full-time seasonal.

5 Q But wouldn't seasonal be circled if you were
6 a full-time seasonal?

7 A It could be. It could be any of the above,
8 if you were seasonal or full-time seasonal
9 or you could be part-time seasonal.

10 Q My understanding --

11 A When Jennifer finished this out -- filled
12 this out, she obviously circled full-time.

13 Q And you signed it as --

14 A Right.

15 Q -- an approval of the change?

16 A Right.

17 Q And full-time on this form means full-time
18 year-round?

19 A On this form, I would say it does.

20 Q Do you remember in Ms. Cosgrove started
21 assuming the responsibilities of
22 administrative assistant - catering sales
23 after you offered the position to her?

24 A I don't believe she ever did.

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1 Q And what do you remember happening?

2 A More of a recollection from Monday, goes
3 back to when -- after this discussion, she
4 and Jennifer discussed wrapping up a few
5 things over the next couple of weeks
6 following the conversation on the catering
7 sales side; and before this ever became in
8 effect, she went out on leave, before she
9 ever assumed the duties of it, I should say.

10 Q And did you ever discuss -- I know, as we
11 talked about on Monday, she went out on
12 leave earlier than anticipated.

13 Did you ever discuss with her how her
14 going out on leave earlier would affect this
15 new position?

16 A No, I don't believe so.

17 Q Do you remember discussing that with
18 anybody?

19 A No -- at the time that we were heading
20 into -- into season, that we had to have
21 somebody cover the position for the season.

22 Q So while Ms. Cosgrove was on maternity
23 leave, did you hire a replacement for that
24 position?

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1 A Yes.

2 Q Who is that?

3 A Lauralee Taddeo, I believe the last name is.

4 Q Do you know what Ms. Taddeo was told about
5 the permanency of the position?

6 A No idea. Jennifer would have been the one
7 to hire her. I'm sure -- I don't know. I
8 wasn't in the conversation.

9 Q So you don't know if she was told that she
10 was a replacement for somebody out on leave?

11 A No.

12 Q Did you discuss with Ms. Cosgrove at your
13 meeting with her whether the position would
14 be a permanent position, that administrative
15 assistant - catering sales?

16 A I don't recall that.

17 I will say. This: From the
18 standpoint of the full-time positions that
19 we have -- and I think I stated it before --
20 we assess this every month, every year.

21 This year we had another body that
22 was laid off that was a full-time position
23 that it wasn't necessary to keep as
24 full-time even though it was previously.

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1 established procedure into place from the
2 handbook?

3 MR. WILGOREN: Objection.

4 A No, there wasn't a reason to.

5 Q So that's a no?

6 A No, there wasn't a reason to.

7 MR. WILGOREN: The answer speaks for
8 itself.

9 Q Are you aware of what position Ms. Cosgrove
10 was in when she went out on her leave?

11 A You'll have to clarify the question.

12 Q What position did she hold when she went out
13 on her leave?

14 A I believe it was called conference sales or
15 conference services or something along those
16 lines.

17 Q And what -- do you remember what pay rate
18 she was at?

19 A I --

20 MR. WILGOREN: Are you talking about
21 the last day she worked?

22 Q When she went out on her leave.

23 A When she went out on her leave. Her
24 previous rate was \$17 an hour. The new rate

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1 was going to be \$12, I believe.

2 Q And do you remember what rate was in effect
3 during her leave?

4 A I don't know.

5 MR. WILGOREN: Well, I'm going to
6 object and move to strike the question
7 because it assumes facts not in evidence.

8 She wasn't -- Ms. Cosgrove wasn't
9 working. There was no rate in effect at the
10 time of her leave.

11 MS. SCHWAB: There is a rate in
12 effect for her disability leave. How does
13 that assume facts not in evidence?

14 MR. WILGOREN: First of all, there's
15 no evidence about --

16 MS. SCHWAB: Well, my question was
17 what was her rate when she went out on
18 leave.

19 MR. WILGOREN: Well --

20 MS. SCHWAB: You can --

21 BY MS. SCHWAB:

22 Q What was her rate the last day before she
23 went out on her leave?

24 And, Mr. Brennan, is your answer that

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1 A I can't say how Lee did it.

2 Q Did you review Lee's schedules of maternity
3 leave?

4 A I did not.

5 Q So would this be a document that you had
6 reviewed?

7 A No.

8 Q Up at the top of the document, it says
9 Patricia Cosgrove, \$17; is that correct?

10 A That's what it says.

11 Q And then it appears to be -- although you
12 haven't seen it before, it appears to be a
13 document calculating maternity leave?

14 A That's what it looks like.

15 Q Reviewing this document, would you conclude
16 from this document that she was paid 60
17 percent of a \$17 per hour salary on her
18 maternity leave?

19 A That would be the appearance.

20 Q Would it surprise you that she would be paid
21 at \$17 an hour -- at a rate based on a \$17
22 an hour salary for her maternity leave?

23 A I guess versus being the \$12 an hour?

24 Q Yes.

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1 A I would venture a guess. It was probably
2 asked which I wanted to do, and I said 17's
3 fine.

4 Q Do you remember having that conversation?

5 A Not for a fact, no.

6 Q You think -- who would have asked you?

7 A Lee.

8 Q While Ms. Cosgrove was on maternity leave,
9 did you have any discussions with anybody
10 about what position to return her to when
11 she came back?

12 A No.

13 Frankly, at that point, I -- I was
14 lost in translation to the fact that she was
15 coming back.

16 Q So at that point, you didn't expect her to
17 come back?

18 A Correct.

19 Q And did you have any discussions about her
20 with anybody during the time she was on
21 leave?

22 A No. I mean, my thought was that she was
23 gone.

24 Q And what was the basis for your feeling that

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1 she wasn't coming back?

2 A I guess I had forgotten about the -- her
3 couple of memos that she had sent; and then,
4 as I said before, normally Lee O'Shea would
5 do a -- you know, a notice, you know, back
6 to me when somebody's maternity was coming
7 up, and it didn't happen.

8 Q During the time that Ms. Cosgrove was on
9 leave, did you ever receive any messages
10 from Ms. Cosgrove?

11 A I believe so, yes.

12 Q How many messages did you receive?

13 A I have no idea.

14 Q What do you remember about the messages you
15 received from her?

16 A That I was given a message that she had
17 called.

18 Q Do you remember the substance of the
19 message?

20 A No.

21 Q Do you remember if you returned her call?

22 A I don't believe I did.

23 Q Do you remember thinking anything about why
24 she might have been calling?

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1 A Probably thought why is she calling.

2 Q And do you remember discussing with anybody
3 that you had received a message from her?

4 A It was more coming from the secretary at the
5 time telling me she had called.

6 Q And other than a message from Ms. Cosgrove,
7 did you have any indication that she would
8 be coming back from her leave before the day
9 she came back?

10 MR. WILGOREN: Object to the extent
11 it mischaracterizes -- assumes facts not in
12 evidence.

13 A Can you repeat that?

14 Q Other than the phone message from
15 Ms. Cosgrove, did you have any other
16 indication -- receive any other indication
17 that she was coming back from her leave?

18 MR. WILGOREN: Objection to the
19 extent that the -- the conclusion is made
20 that the phone message supposes that
21 Ms. Cosgrove was coming back.

22 A The -- obviously the other two documents
23 were there, although I had forgotten about
24 them.

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1 Other than that, I don't know if she
2 reached out or not.

3 MS. SCHWAB: Let me mark
4 Exhibit whatever.

5 MR. WILGOREN: 17.

6 (Exhibit No. 17 marked for
7 identification.)

8 BY MS. SCHWAB:

9 Q Do you recognize the document marked as
10 Exhibit 17?

11 (Witness read document.)

12 A Yes.

13 Q What is the document?

14 A It's a letter from this law firm.

15 Q And is there an attachment to the letter?

16 A Yes.

17 Q What's the attachment?

18 A Attachment A.

19 Q The page before Attachment A?

20 A Okay. Commission Against Discrimination.

21 Q Do you remember receiving this letter?

22 A I do.

23 Q Do you remember if you received it before
24 Ms. Cosgrove returned to work?

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1 A I assume so. I don't remember the timing of
2 it.

3 Q Did you contact an attorney after receiving
4 this letter?

5 A I'm sure I would have.

6 Q Did you contact -- did you discuss the
7 receipt of this letter with anybody else?

8 A It would have been with our attorneys.

9 Q Anybody other than the attorneys?

10 A At that point, it -- Mark O'Neil probably.

11 Q Do you remember what you said to Mark O'Neil
12 about it?

13 A No, just that Patricia had attorneys and
14 wanted to take it to a discrimination court.

15 Q Do you remember what Mr. O'Neil might have
16 said about it?

17 A No.

18 Q Anybody else that you might have talked to
19 about this?

20 A Nobody comes to mind.

21 Q This -- and did this letter notify you that
22 Ms. Cosgrove was planning to return to work?

23 A Yes, I believe it did.

24 Q Okay.

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1 And you testified before that because
2 of a communication -- a miscommunication,
3 you hadn't thought she was coming back.

4 What actions did you take after you
5 received this letter and realized that she
6 was planning to come back from maternity
7 leave?

8 A I still wasn't aware she accepted, other
9 than this saying she was coming back.

10 In my mind, I didn't remember
11 anything of her accepting the other
12 position.

13 Q So then what did you expect would happen
14 when she would return from leave?

15 A I still wasn't expecting her to return from
16 leave.

17 Q Even after receiving this letter?

18 A Yes.

19 Q And even though it says in paragraph 3,
20 "Ms. Cosgrove plans to return to work next
21 week to the administrative assistant's
22 position to which she was demoted" --

23 A That point, I didn't believe she was coming
24 back.

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1 that might need to be done.

2 I talked to John Shea, who is our IT
3 person, and he was able to set up a machine
4 and scanner to allow us to give her a
5 project to start on, that we needed to get
6 documents scanned in to eliminate paper.

7 Q And what was the -- can you describe more
8 about what this position entailed?

9 A It entailed scanning -- scanning documents,
10 financial documents and membership
11 documents, old existing documents that we
12 needed to maintain permanently, but they
13 were paper files so we were converting them
14 to electronic files.

15 Q And where was the scanning to take place?

16 A It was in the offices inside the warehouse
17 where the documents were all stored.

18 Q How long did you anticipate this project
19 lasting?

20 A The project is basically an ongoing project.
21 I envisioned -- I don't know, you know, not
22 a definitive period of time but until we
23 really slowed down and finished the layoffs.

24 Q How would you compare this position to the

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1 job of administrative assistant in the
2 catering sales department?

3 A They're both clerical.

4 Q Any other comparisons?

5 A They're both basically clerical,
6 administrative positions.

7 Q Are there differences between the two
8 positions?

9 A At the point in time when she was working on
10 it, there wasn't a need for answering phones
11 and things of that nature. That wasn't the
12 role or the project, where in catering sales
13 you would be answering phones.

14 Q So they differed in that way.

15 What about in the work environment,
16 was there a difference in the work
17 environment?

18 A One's at the country club and one's in an
19 office in the warehouse.

20 Q And what is the difference between those two
21 locations?

22 A One's a warehouse and one's a country club.

23 Q And so what's the warehouse like?

24 A The warehouse has -- is a normal warehouse

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1 with three offices in it.

2 Q And what's the country club like?

3 A The country club is a normal country club
4 with offices in it, meeting space in it and
5 dining space in it, a golf shop in it,
6 locker rooms.

7 Q How many people work in the country club --
8 at that time how many people worked at the
9 country club?

10 A It depends on the day.

11 Q What's the average?

12 A It depends on the day.

13 Are you talking about a Friday, a
14 Saturday, a Tuesday, a Monday? What day are
15 you talking about?

16 Q On a Tuesday.

17 A On a Tuesday, you probably have -- if
18 there's no events going on -- maybe 10 or
19 12.

20 Q How about Friday when there are events going
21 on?

22 A Depending on the time of day, evening time,
23 you could add another 10 to 15 service
24 staff.

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1 something similar to what she accepted"?

2 A I needed to have something administrative,
3 administrative type position.

4 Q Is it your understanding anything that falls
5 under the administrative/clerical category
6 is similar to anything else that falls into
7 that category?

8 MR. WILGOREN: Objection. The
9 question's vague. I don't understand.

10 A I guess I need a little clarification on
11 what your question is.

12 Q Did you understand that you could return
13 Ms. Cosgrove to any position that you would
14 categorize as administrative or clerical?

15 A A like position with like pay.

16 Q Anything that -- forget about the pay, but
17 anything that you would categorize as
18 administrative, did you think you could put
19 Ms. Cosgrove in that position?

20 A A like administrative position.

21 Q So --

22 A Administrative duties include --

23 Q Okay.

24 So any administrative position would

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1 be like in your understanding?

2 A Yes.

3 Q And at some point, did you learn that
4 Ms. Cosgrove might have been dissatisfied
5 with her new position?

6 A I think she sent an email or something to
7 the effect.

8 Q And did you take any action in relation to
9 that?

10 A No, that was the position we had.

11 I know it was an issue with heat or
12 something at one point. The guys fixed heat
13 or added heat or something to it. I know
14 she needed a refrigerator. They brought a
15 refrigerator to her.

16 They try to meet what you need.

17 MS. SCHWAB: Let me mark Exhibit 18.

18 (Exhibit No. 18 marked for
19 identification.)

20 BY MS. SCHWAB:

21 Q Do you recognize this document?

22 A Yes.

23 Q Do you remember receiving it?

24 A Vaguely.

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1 Q And do you remember if you took any action
2 after you received the document?

3 A I don't recall.

4 Q Do you recall calling an attorney after you
5 received it?

6 A I would have forwarded it to my attorney.

7 Q Do you recall if you contacted Ms. Cosgrove
8 after receiving the document?

9 A I don't recall.

10 Q Were you aware of Ms. Cosgrove going to
11 Tanya Copestick's office to pump breast milk
12 during the time she was working in the
13 warehouse?

14 A Yes.

15 Q How did you become aware of that?

16 A I don't know. Someone told me. I don't
17 know.

18 Q Do you remember who might have told you?

19 A No.

20 Q Do you remember what your reaction was when
21 you learned?

22 A I didn't see it as a big issue.

23 Q Did you comment to Ms. Cosgrove about it?

24 A I believe I did.

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1 Q And what do you remember you said?

2 A Something to the effect of we're walking a
3 fine line here. Don't cross the line.

4 Q With Ms. Cosgrove, you said that?

5 A Yes -- to -- no, not Ms. Cosgrove,
6 Copestick. I'm sure.

7 Q Okay.

8 And what did you mean when you said
9 we're walking a fine --

10 So you said that --

11 A To Tanya, I'm sorry.

12 Q You said, We're walking a fine line right
13 now, and what else, I'm sorry?

14 A Just watch what you say, or something to
15 that effect.

16 Q And what did you mean by that?

17 A Basically Patricia had already put us on
18 notice that she was looking to try to sue
19 us.

20 Q So how were you walking a fine line?

21 A We just had to make sure that our ducks were
22 in a row and that we were doing what we
23 could to accommodate her.

24 Q Did you make any comment to anybody else

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1 warehouse?

2 A No.

3 Q Did you know she was unhappy --

4 A And I believe, by the way, there were at
5 least two phones in the warehouse. One of
6 them might have been locked, but the other
7 one was not.

8 Q Do you remember if she was unhappy with the
9 isolation in the warehouse?

10 A I believe she felt that was an issue, even
11 though there were two other people officed
12 there.

13 Q Do you remember seeing Ms. Cosgrove at the
14 conference center at some point in October
15 and instructing her that you wanted her back
16 down at the warehouse?

17 A She had an -- took an excessive amount of
18 time away from the warehouse. In other
19 words, as John Shea said, she was never
20 there.

21 Q So you do remember saying that to her?

22 A I remember saying that. I remember that
23 being the issue.

24 Q And do you remember addressing that with

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1 A No.

2 Q Did you contact an attorney before
3 terminating Ms. Cosgrove's position?

4 MR. WILGOREN: Objection.

5 A I can't say definitively.

6 Q Did you make the final decision to terminate
7 Ms. Cosgrove?

8 A Yes.

9 Q And --

10 A To do the layoff, you mean?

11 Q To terminate her employment.

12 A To the layoff.

13 Q You would characterize it as a layoff?

14 A Yes.

15 Q And did you discuss this decision with
16 Ms. Cosgrove?

17 A I informed her.

18 Q And what were the circumstances of that?

19 A I believe it was myself and Jen Perry, I
20 believe.

21 Q And did you meet in the warehouse?

22 A I don't remember where it was.

23 Q And what did you say to Ms. Cosgrove?

24 A Basically that the position was ending for

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1 the season, you know, effective that day.

2 Q And what did Ms. Perry say?

3 A I don't think she said anything.

4 Q And how about Ms. Cosgrove?

5 A I don't remember what she said.

6 Q Did you -- before terminating -- before
7 laying Ms. Cosgrove off, did you think about
8 any other administrative position that you
9 could put her into?

10 A No, there were none.

11 Q Did you think about it?

12 A There weren't any to be thought of. We had
13 eliminated -- continued to eliminate those
14 positions for the season.

15 Q How many people were employed as
16 administrative assistants at New Seabury at,
17 say, November 2003?

18 A I would say from the October-November range,
19 maybe five.

20 Q And what about in December?

21 A There would have been two.

22 Q Two?

23 A Mm-hmm.

24 Q Who were the two in December?

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1 A For a layoff or termination.

2 Q I see.

3 Was that happening with some
4 frequency in the first part of 2003?

5 A Yes.

6 Q Now, you testified that you had discussions
7 with Jen Perry and Roy Chase about
8 Ms. Cosgrove's job duties prior to your
9 making the decision to eliminate her
10 position?

11 A Correct.

12 Q Okay.

13 What did Jen Perry tell you about
14 Ms. Cosgrove's job duties?

15 MS. SCHWAB: Objection. Asked and
16 answered.

17 A The primary function revolved around booking
18 the lodging units for groups of anything
19 over ten rooms. Rooms was the major scope
20 of her work. At that point, having a
21 lodging department, I saw it as duplication.

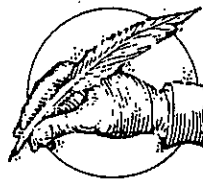
22 Q And did they say was -- was that the same
23 report you received from Mr. Chase?

24 A Yes. The question to Roy, Will this effect

Exhibit R

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Patricia Cosgrove v. New Seabury Resources Management, Inc.

Transcript of the Testimony of:

Jennifer L. Perry

April 7, 2006

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Deborah G. Rumson 18770

1 my current position since then.

2 Q. That's the position you came in as?

3 A. Right.

4 Q. What were your responsibilities as catering
5 sales manager?

6 A. Selling weddings, social events,
7 coordinating weddings and social events,
8 staffing.

9 Q. Did you have any supervisory
10 responsibilities in that role?

11 A. Yes, the wait staff.

12 Q. What are your responsibilities as director
13 of catering sales?

14 A. Responsibilities of the catering sales
15 manager, in addition to supervising the
16 catering sales managers that I have on
17 staff, the two.

18 Q. How many people do you supervise currently?

19 A. I have three, two managers, and the rest are
20 all wait staff.

21 Q. Any admin?

22 A. And the admin person as well. It is an
23 assistant catering sales manager. We no
24 longer have the admin position.

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7

1 Q. Who are the two catering sales managers now?

2 A. Aaron Brochu and Regina Aubuchon.

3 Q. And who is the assistant catering sales
4 manager?

5 A. Amber Gindememenico.

6 Q. What are the responsibilities of the
7 assistant catering sales person?

8 A. She does sites. She does some
9 administration work. She also oversees
10 events, meets with brides, helps plan and
11 execute weddings.

12 Q. What do you mean by "does sites"?

13 A. She meets with a client and shows them the
14 space. A bride will come in and she is
15 looking to do a wedding, and she will show
16 her the space.

17 Q. When you say she does some administrative
18 work, does she answer the phones?

19 A. Yes. One of Amber's responsibility is
20 answering the phone.

21 Can you ask the question again.

22 Q. I think you answered it.

23 Does she send faxes that need to be
24 sent?

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8

1 A. Sometimes.

2 Q. What about sending out correspondence?

3 A. Yes.

4 Q. Does she do any of the billing?

5 A. Primarily we do most of the billing.

6 Q. We being?

7 A. The catering sales managers. We are
8 responsible for our events and our own
9 billing.

10 Q. Does she send out the wedding packages?

11 A. Yes, she does.

12 Q. Who generates the invoices?

13 A. I generate my invoices for my events. Aaron
14 generates his, and Regina will generate
15 hers.

16 Q. Who follows up to make sure that everything
17 has been paid?

18 A. Typically the catering sales manager of the
19 event. We divide the events up amongst each
20 other.

21 Q. How long has Aaron Brochu been a catering
22 sales manager?

23 A. He started in 2001, five years in April.

24 Q. What about Regina Aubuchon?

1 A. She started at the end of February, a couple
2 of months.

3 Q. Before that was there someone else?

4 A. There was.

5 Q. Who was that?

6 A. Jane Henry.

7 Q. How long was Jane Henry a catering sales
8 manager?

9 A. Jane was there for about four and a half
10 years.

11 Q. What about Amber Gindememenico; how long has
12 she been there?

13 A. She has been with the company, I don't know
14 exactly, between seven and nine years. She
15 started when she was 16. I think it is
16 about eight years.

17 Q. How long has she been in the position of
18 assistant catering sales manager?

19 A. She has been in that position since probably
20 September -- no. January of 2005.

21 Q. So for a little more than a year?

22 A. Yes.

23 Q. She had been full time?

24 A. She was in the lodging department before

1 that.

2 Q. From January 2005 to the present has she
3 been full time?

4 A. Yes.

5 Q. Before her who was in the position of
6 assistant catering sales manager?

7 A. Prior to that, there wasn't anybody in it
8 right before she started. It was a seasonal
9 position. We usually hired in May. It
10 would go until October. Laura Lee Taddeo
11 was in that position before. But again it
12 was a seasonal position.

13 Q. Laura Lee Taddeo was in the position in 2004
14 from what month to what?

15 A. From May to October. But, again, the
16 position has changed. It is a different
17 title and different responsibilities.

18 Q. What was the title when Laura Lee Taddeo was
19 in the position?

20 A. Well, it is -- let me make it clear. It is
21 not the same position. Laura Lee's position
22 was an administrative assistant. It was a
23 position from May through October typically.
24 That could have changed. She may have

1 would be supervising her?

2 A. I would assume so, yes.

3 Q. Do you remember doing that?

4 A. No.

5 Q. Do you remember reviewing her
6 responsibilities at any point when she came
7 into your department?

8 A. She had her responsibilities initially.
9 She, basically, was -- I was just the one
10 she was reporting to and who she would go to
11 if she needed time off or scheduling.
12 That's, basically, my extent of managing
13 her. She pretty much managed herself.

14 Q. She would just ask you about
15 personnel-related things?

16 A. For the most part, yes.

17 Q. Did your supervision of Ms. Cosgrove ever
18 become more in depth than that, than just
19 asking for time off, things like that?

20 A. Not really.

21 Q. At any point did you have conversations with
22 either the general manager or anyone else at
23 New Seabury about Patricia's
24 responsibilities and what she was doing?

1 sales staff.

2 Q. What specifically did you talk about? Did
3 he ask if you could absorb those
4 responsibilities?

5 A. Yes.

6 Q. What did you say?

7 A. That we could.

8 Q. Did you talk to the catering sales managers
9 about that?

10 A. I don't think so.

11 Q. At the time did you and he talk about
12 specific responsibilities that Ms. Cosgrove
13 had and who would take over those
14 responsibilities?

15 A. We just talked about if we would be able to
16 take on those responsibilities. We knew
17 what they were. I knew what they were. And
18 because there wasn't that much to sell, I
19 thought we could, and we did.

20 MS. SCHWAB: I am going to mark
21 this as Exhibit 1.

22 (Document marked as Exhibit 1 for
23 identification).

24 Q. I am handing you Exhibit 1. Do you

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1 Q. "No. 2. Solicit group business via personal
2 calls to corporations and other group
3 markets in assigned territory," do you know
4 if that's something that Ms. Cosgrove did?

5 A. Not while she worked in the country club
6 area, that I am aware of. I didn't see a
7 call list. She may have done it, but I
8 didn't actually know that she was doing it.

9 Q. Were either responsibilities, 1 or 2, things
10 that were absorbed into the catering sales
11 department?

12 A. At this time, no, we are not -- I am
13 personally not soliciting business from
14 corporate clients because there is not -- we
15 don't have a lot of guest rooms or meeting
16 room space to solicit that business for. We
17 do have some repeat clients that come back,
18 people that call in, smaller groups, but we
19 end up turning away a lot of business
20 because we do not have the meeting room
21 space or the overnight accommodations.

22 Q. As to Responsibility No. 3, "Arrange and
23 perform site inspections of the property to
24 potential clients," do you know if this is

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1 something Ms. Cosgrove did as conference
2 sales manager?

3 A. Yes.

4 Q. Who took over Ms. Cosgrove's
5 responsibilities doing that?

6 MR. WILGOREN: Objection.

7 A. We do that.

8 Q. We?

9 A. Myself, my two catering sales managers.

10 Q. When did you and the two catering sales
11 managers start taking over that
12 responsibility?

13 A. I would say when Patricia left in May,
14 whenever she had left, whatever year that
15 was.

16 Q. 2003?

17 A. 2003.

18 Q. "No. 4. Ensure timely and accurate
19 communication in both client and hotel
20 operation team," is this something that Ms.
21 Cosgrove did?

22 A. Yes.

23 Q. Did someone take over those
24 responsibilities?

Jennifer L. Perry 4-7-2006
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1 A. Yes.

2 Q. Who was that?

3 A. Myself and the catering sales managers.

4 Q. How about No. 5; "Develop and maintain
5 accurate and workable trace files to ensure
6 timely contact of the existing accounts," is
7 that something Ms. Cosgrove did?

8 A. Yes.

9 Q. Is that something that the catering sales
10 department has taken over?

11 A. Yes.

12 Q. "Monitor the status of all bookings to
13 ensure contracts and deposits are received
14 in a timely manner," is that something Ms.
15 Cosgrove did?

16 A. Yes.

17 Q. Something that's been taken over in catering
18 sales?

19 A. Yes.

20 Q. How about No. 7; "Provide conference
21 services department with accurate details
22 and all pertinent information when turning
23 over files," is that something Ms. Cosgrove
24 did?

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1 A. Prior to joining the catering sales office,
2 yes.

3 Q. Is that something that has been taken over
4 in the catering sales department?

5 A. We are, in essence, the conference sales
6 representative. We book it and coordinate
7 it.

8 Q. So there is no conference services
9 department anymore; is that right?

10 A. I have absorbed that responsibility in my
11 department as well.

12 Q. So you have the details and pertinent
13 information?

14 A. Yes.

15 Q. The second No. 7, which is actually No. 8,
16 "Maintain contact with client and conference
17 service representative assigned to the group
18 while their events are taking place," is
19 that something that Ms. Cosgrove did?

20 A. Yes.

21 Q. What has happened to that responsibility?

22 A. Again, the conference sales position is a
23 representative. That's my position. So I
24 am that person.

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1 Q. How about 9; "Attend and staff trade shows,"
2 do you know if that's something that Ms.
3 Cosgrove did?

4 A. Yes.

5 Q. Is that something that's been taken over?

6 A. We don't do that anymore.

7 Q. "No. 10. Attend local and regional trade
8 meetings, for example, HSMA, Meeting
9 Planners International, et cetera," is that
10 something that Ms. Cosgrove did?

11 A. Yes.

12 Q. Is that something that has been taken over
13 by the catering sales department?

14 A. We no longer do that.

15 Q. "No. 11. Submit weekly activities report to
16 director of sales." Is that something that
17 Ms. Cosgrove did?

18 A. Not when she was reporting to me.

19 Q. She didn't submit a weekly activities report
20 to you?

21 A. No, she didn't.

22 Q. Did you ask her for that?

23 A. No, I didn't.

24 Q. And did you assign her any special projects

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1 when she was reporting to you?

2 A. Occasionally, yes.

3 Q. What types of special projects?

4 A. I don't remember.

5 Q. Can you give me an example of, would it have
6 been something administrative?

7 A. Possibly. It was a long time ago.

8 Q. You said that as to Nos. 9 and 10,
9 "Attending trade shows and regional trade
10 meetings," that's not something that's done
11 anymore. Was there an explicit decision not
12 to attend trade shows and regional trade
13 meetings?

14 A. The trade shows that Patricia was attending
15 were in relation to meetings, groups coming
16 in doing their meetings and lodging, which,
17 again, there wasn't a lot of space for them
18 to stay or meet in.

19 We did do wedding trade shows, but
20 stopped that because we were not booking
21 weddings from those trade shows. She did
22 not attend -- just the trade shows for the
23 meetings. It was not necessary. It didn't
24 bring in anymore business, so there was no

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1 Q. Who was that?

2 A. I believe it was Laura Lee Taddeo.

3 Q. Do you remember how that happened?

4 A. No.

5 Q. Do you know, were you involved in contacting
6 Laura Lee Taddeo?

7 A. I don't remember.

8 MS. SCHWAB: I am going to mark
9 Exhibit 3.

10 (Document marked as Exhibit 3 for
11 identification)

12 Q. Ms. Perry, do you recognize this document?

13 A. Are you asking if I have seen it before?

14 Q. Yes.

15 A. I don't remember seeing it, but everything
16 on here is familiar.

17 Q. The descriptions are familiar?

18 A. Right.

19 Q. What's familiar about them?

20 A. It says "administrative assistant" at the
21 top, and then it has responsibilities
22 underneath it, which looks to be what that
23 position would do.

24 Q. The position that Ms. Cosgrove was offered?

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1 A. Right.

2 Q. Can you go through and just read through to
3 yourself and let me know if there is
4 anything in this list that isn't within the
5 administrative assistant position that Ms.
6 Cosgrove was offered.

7 A. Can you repeat that question.

8 Q. Just go through and read to yourself and see
9 if anything in here is something that
10 wouldn't be done by the administrative
11 assistant position.

12 A. Everything would be done by the
13 administrative assistant.

14 Q. Does it leave anything out?

15 A. There is always room in a position for other
16 areas that you might do, but just depends
17 upon what it is.

18 Q. Anything specific jump to mind that's not in
19 this description?

20 A. There's nothing about meeting with clients
21 or doing site visits, things like that.
22 That was something that sometimes they would
23 do.

24 Q. Anything else?

1 A. She did not.

2 Q. New Seabury's policy provides for disability
3 pay for pregnancy leave?

4 A. Am I aware of it?

5 Q. Yes.

6 A. I am aware there is disability leave. I
7 don't know all of the details.

8 Q. And you get paid a certain percentage of
9 your income?

10 A. Yes.

11 Q. Do you know what that percentage of your
12 income is based upon?

13 A. To be honest, I don't know.

14 Q. Well, would it be what you're earning prior
15 to going out on a leave of absence?

16 A. Right.

17 Q. Do you know what Ms. Cosgrove received for
18 her disability pay?

19 MS. SCHWAB: Objection.

20 A. Yes.

21 Q. Tell us what she received.

22 A. It was the disability percentage on her
23 original salary of \$17 per hour.

24 Q. Does that lead you to conclude that at the

1 time she commenced her leave of absence she
2 was still in the position of the manager?

3 A. Yes.

4 MS. SCHWAB: Objection.

5 Q. And do you know how that came about, that
6 Ms. Cosgrove obtained disability pay based
7 on her compensation as catering sales
8 manager or conference sales manager?

9 A. What I remember, she was finishing out that
10 week in her one position, her initial
11 position as sales manager and was going to
12 start the next week as administrative
13 assistant, but then went out on disability
14 at the end of that week.

15 Q. Do you have any sense as to why she did it
16 that way?

17 MS. SCHWAB: Objection.

18 A. She was getting paid more money to go out on
19 the higher salary.

20 MS. SCHWAB: Objection. How could
21 she have a sense of why Ms. Cosgrove went
22 out on leave.

23 Q. Now, do you know the reason -- did Ms.
24 Cosgrove go out on the maternity leave of

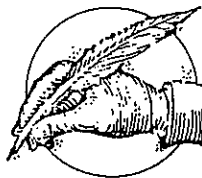
Exhibit S

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Transcript of the Testimony of:

Mark O'Neil

February 14, 2006

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1 and New Seabury.

2 Q. What happened next?

3 A. I met with -- several phone conversations
4 with Wayne, first of all, and then I visited the
5 site to meet with him personally at New Seabury.

6 Q. When did that take place?

7 A. Summer of 2002, I believe late summer.

8 Q. And what happened at that meeting?

9 A. Obviously, I was questioning Wayne as to what
10 he was looking for and what type of consultation
11 agreement he was looking for, and he conveyed to
12 me that New Seabury was owned by American Real
13 Estate Partners out of New York and that Wayne's
14 primary background and experience was not in
15 facility or operational manager at the resort
16 level and that his primary background, if I'm
17 correct, was in finance or financial matters. And
18 they were looking for someone to come in and
19 support their efforts at improving the operational
20 profitability of New Seabury.

21 Q. At that meeting did you and Mr. Kapral talk at all
22 about staffing?

23 THE WITNESS: At that specific
24 meeting?

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1 MS. SCHWAB: Yes.

2 A. I'm sure there was a cursory discussion about
3 it. I do not remember specific individuals,
4 positions or anything of that nature.

5 Q. Was there anyone else at the meeting?

6 A. I don't believe so.

7 Q. Did you meet other people when you were at the
8 facility at that first meeting?

9 A. Yes, did. I'm sure I was introduced to
10 numerous people. I can't specifically remember
11 who I met, other than I did meet, I believe Scott
12 Nickerson who was the golf course
13 superintendent -- I'm sorry, at that time was
14 director of golf. I'm sure I met other
15 individuals in the organization. I specifically
16 can't remember who they might be.

17 Q. After that first meeting with Mr. Kapral, what
18 happened next?

19 A. To the best of my recollection, I believe I
20 was asked to provide some form of management
21 proposal, which I'm sure I created a management
22 proposal with a fee structure typical to any
23 management consulting agreement, and I furnished
24 that to Wayne Kapral.

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1 proposal, what happened next?

2 A. I believe I was then contacted by the
3 president of a American Real Estate Holdings in
4 New York to discuss the agreement -- I'm sorry, to
5 discuss the proposal.

6 Q. About when would that have been?

7 A. To the best of my recollection, August 2002.

8 Q. And the president, is that Albo Antenucci?

9 A. Albo Antenucci.

10 Q. What happened during that conversation?

11 A. I can't recall the specifics of the
12 conversation, but I remember in general Albo asked
13 me to expand on the types of things I would cover
14 in a proposal, and at that time that was I believe
15 our first discussion about the possibility of
16 performing a more detailed operational audit is
17 what it's called in the industry.

18 Q. What's a detailed operational audit?

19 A. Basically it's when you retain a firm like an
20 Essex Golf or someone in that capacity to review
21 the operation from top to bottom or in fairly
22 strong detail, department by department and
23 essentially to gather information, review the
24 details and the data and then make a

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1 recommendation to whoever retained you to perform
2 the operation on audit.

3 Q. Had you conducted operation audits on other
4 facilities previous to this?

5 A. In one form or another, yes.

6 Q. Can you give me examples of facilities for which
7 you've consulted operational audits?

8 A. Yes. Tournament Players Club, River
9 Highlands in Cromwell, Connecticut, Tournament
10 Players Club at Avenel in Washington, D.C. or
11 Potomac, Maryland. Tournament Players Club at
12 Scottsdale, in Scottsdale, Arizona. And then
13 anywhere from 10 to 20 additional clubs over the
14 period of 1990 to 2000.

15 Q. Tournament Players Club, did you conduct
16 operational audits for those facilities through
17 Essex Golf Club?

18 A. No. I was acting in the role as an employee
19 of the PGA Tour.

20 Q. With Essex Golf Club previous to New Seabury had
21 you conducted operational audits?

22 A. I don't recollect any specific operational
23 audits. No.

24 Q. During this conversation you had with Mr.

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1 obviously, while reviewing departmental structures
2 and operational efficiencies, I was also at the
3 same time reviewing his abilities and knowledge of
4 those positions.

5 Q. And what were your conclusions during that period?

6 THE WITNESS: With regards to
7 Mr. Kapral or specific departments?

8 MS. SCHWAB: With regards to
9 Mr. Kapral.

10 A. Mr. Kapral if my mind or in my professional
11 opinion was knowledgeable in the areas of
12 financial management and accounting; however, his
13 experience and knowledge of daily operations and
14 resort and/or golf club management was lacking.

15 Q. What about Mr. Nickerson?

16 A. Scott was, previously to my arrival or
17 involvement with New Seabury, was functioning in
18 the role of golf course superintendent. I thought
19 in that role or his knowledge which would be
20 commensurate with that role was fine, excellent.
21 However, Scott, prior to my involvement, and I'm
22 not sure of the exact date was promoted into the
23 position called director of golf which was then
24 responsible for not only the golf course

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1 maintenance and management of the turf conditions
2 and the playing -- the golf course, also became
3 responsible for the oversight of the golf
4 operation which included the retail store, golf
5 professional staff, and things that are normally
6 under the jurisdiction of either a golf
7 professional trained PGA professional or general
8 manager.

9 I felt that Scott's experience was excellent
10 with golf course maintenance but was lacking in
11 the area of golf operations in general,
12 explicitly, the retail components and the
13 operational side of the business.

14 Q. Were there any other specific positions other than
15 those two that you identified as in need of
16 restructuring or some sort of reorganization,
17 during that period?

18 MR. WILGOREN: Objection. Which
19 period?

20 MS. SCHWAB: During the period of
21 approximately August to December 2002.

22 A. During that time frame when I was reviewing
23 all departments, in addition to those two specific
24 positions. I felt there was numerous areas of

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1 restructuring required and reorganization required
2 within most of the other departments.

3 Q. And any specific positions?

4 A. Numerous. Which department would you want to
5 start with?

6 MS. SCHWAB: Let's start with golf
7 maintenance.

8 A. With golf maintenance, I felt that the
9 appropriate staffing levels would have been to
10 have more of what would be considered typical
11 structure which would be a golf course
12 superintendent overseeing the operations of the
13 department, potentially one or two assistant
14 superintendents with specific duties and
15 responsibilities for various portions of the golf
16 course maintenance budget. And a golf course
17 mechanic, and then the staffing or what we
18 normally call the operators or front line staffing
19 below that. At the time of reviewing that
20 department, it appeared to me in my review that
21 there were some gross inefficiencies taking place
22 within golf course maintenance which led to higher
23 than normal labor costs.

24 Q. And what about golf operations?

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1 A. Golf operations, which is normally considered
2 in the industry the inside part of the business, I
3 felt that there was a gentleman named Bob McGraw
4 who had been promoted to the head golf
5 professional position and was really functioning
6 in a different role completely. He was really
7 functioning in the role of director of instruction
8 because I believe if I'm correct, 75 percent or
9 more of his time was spent providing instruction
10 lessons to members and non-members. He really did
11 not have the oversight and daily responsibility
12 for the retail operation and some of the other
13 specific duties, cart maintenance, outside
14 operations where people pull up and, you know, you
15 take the bag and direct them.

16 I felt that there were other people within
17 that department that did not have clearly defined
18 duties and responsibilities and seemed like there
19 was numerous redundancies in what certain people
20 were doing, and I felt there, once again, that the
21 labor costs relative to the amount of
22 responsibilities and duties that were undertaken
23 by the department as well as the revenue that was
24 generated in an area such as retail golf shop. I

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1 felt the labor was excessive for the product that
2 was being delivered.

3 Q. What about in general and administrative?

4 A. Under the G & A department, it was clear that
5 they were overstaffed in many areas, there was
6 many inefficiencies taking place within that
7 department. There was numerous people performing
8 to me what seemed to be like tasks and in
9 comparison to other clubs of a similar size,
10 nature, revenue, magnitude, that they were
11 overstaffed in numerous areas.

12 Q. And food and beverage?

13 A. Food and beverage was an extremely difficult
14 department to evaluate only because there are
15 several outlets that fall under the food and
16 beverage heading. There is the main clubhouse,
17 there is the Popponesett Inn, snack bar, beverage
18 cart. So, in that department also there appeared
19 to me to be a lack of direction and lack of
20 defined duties and responsibilities.

21 Q. And membership?

22 A. Membership at a club like New Seabury which
23 was in a membership sales mode, as are most clubs
24 at the time, I originally reviewed the department,

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1 I also felt that although the membership
2 department had a couple of competent individuals,
3 that their skills were probably not commensurate
4 with what their tasks and duties were. So I felt
5 there was opportunities there to make changes,
6 too.

7 Q. And facilities management?

8 A. Facilities management was unique in that for
9 many years prior to my arrival, they were
10 responsible for a much larger area and number of
11 facilities and that had been reduced over the
12 years, and it was my observation that the staffing
13 levels and duties and responsibilities had not
14 been proportionally reduced as the number of
15 facilities they managed had been reduced. So I
16 felt there was some inefficiencies there also.

17 Q. Did you put your conclusions that we've just
18 discussed, into your operational audit?

19 A. I believe so in summary form.

20 Q. In producing the operational audit was your goal
21 to give full assessment of all the changes you
22 anticipated should be made at New Seabury?

23 A. I was really charged with the task of
24 reviewing the daily operation of the resort and

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1 making limited recommendations as to things I
2 thought would be wise to improve.

3 Q. But was your plan to give a complete assessment at
4 that time?

5 A. A complete assessment in detail would have
6 required -- a resort of that level, much more time
7 than I was given.

8 Q. So, with respect to the staffing restructuring
9 that we discussed before happened, would you say
10 that you had a fairly complete understanding of
11 what needed to be done to restructure in those
12 departments?

13 A. I made an assessment based on my visits and
14 review of the club of what I thought were
15 appropriate adjustments that should be made.

16 MS. SCHWAB: I want to get to the
17 operational audit in a minute, but first I want to
18 mark another Exhibit 3.

19 (PLAINTIFF'S EXHIBIT 3
20 MARKED FOR IDENTIFICATION)

21 Q. Do you recognize Exhibit 3?

22 A. Yes.

23 Q. This document is not signed, but does this look
24 like the letter that you would have sent to

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1 A. It appears to, without going through it in
2 detail, it appears to be.

3 Q. And this is a document that you personally
4 prepared?

5 A. Yes.

6 Q. Did you have any help preparing it?

7 A. I may have had help doing the word
8 processing, things like that, administrative
9 support.

10 Q. But substantively?

11 A. No. Substantively, this was my review and my
12 work.

13 Q. Unfortunately, the pages are not numbered, so
14 you're going to have to bear with me as I ask
15 questions. I have numbered my pages and what I
16 have with operational audit results being Page 1,
17 Page 5 after that. If that's one what would be
18 Page 5 starting with Professionals. You list,
19 "The following minimum staff changes." What do
20 you mean by staff changes there?

21 A. I believe I was referring to that these
22 positions would require some form of change,
23 alteration, restructuring, something along --
24 something that would be considered a change in

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1 their duties and responsibilities, the position in
2 general or further review.

3 Q. So, it could mean adding or eliminating?

4 A. Um-hum.

5 MR. WILGOREN: You need to say yes.

6 A. Yes.

7 Q. At the time who was the general manager, COO?

8 A. At this time that would have been Wayne
9 Kapral.

10 Q. And director of golf?

11 A. That would have been Scott Nickerson.

12 Q. Who was director of membership sales at the time?

13 A. At that time would have been Rhonda Rodgers.

14 Q. Corporate sales manager?

15 A. I can't recall if there was one.

16 Q. Banquet manager?

17 A. I believe that would have been Jennifer,
18 Jennifer Perry.

19 Q. And possible food and beverage director, that
20 sounds like a position that was to be added
21 potentially?

22 A. I can't recall if there was an individual in
23 that position at that time, or it was the
24 possibility of either adding someone.

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1 Q. Okay. We've spoken about Mr. Kapral and
2 Mr. Nickerson. What changes did you contemplate
3 with respect to Rhonda Rodgers' position?

4 A. Rhonda was very capable and competent at,
5 what I would call management relations, but the
6 duty of this position was primarily to retain new
7 members or to obtain new members, and I felt that
8 Rhonda did not have the, necessarily, the
9 prospecting and sales execution skills necessary
10 to increase the number of members.

11 Q. And corporate sales manager, do you remember what
12 changes were made with respect to that position?

13 A. I believe, to the best of my knowledge, we
14 recruited someone for this position. So I don't
15 think at this time there was someone performing
16 that function.

17 Q. How did you go about recruiting someone for that
18 position?

19 A. I don't remember the specifics, but usually
20 it is through some form of targeted employment ad
21 in either an industry specific periodical, could
22 have been something as general as an ad in the
23 Boston Globe. I don't remember specifically how
24 we tried to attract a person for that.

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1 Q. Was there any thought about hiring internally for
2 the corporate sales manager?

3 A. I don't remember specifically to this
4 position, no.

5 Q. Generally, when new positions came up, were there
6 efforts to hire internally?

7 A. In general, our company's philosophy to first
8 look internally to see if there is an available
9 candidate prior to going outside the company, yes.

10 Q. With respect to Jennifer Perry's position, what
11 changes did you think needed to be made?

12 THE WITNESS: With respect to her
13 specific position?

14 MS. SCHWAB: Yes. She's listed under
15 one of the minimum staff changes.

16 A. I can't remember anything specific to her.
17 It would be conjecture for me to try to think of
18 specific things to her.

19 Q. Do you know why her position would have been
20 listed as one of the minimum staff changes?

21 A. I believe that that was a position that we
22 were considering altering the compensation
23 structure to be more incentive-based versus
24 salary-based, I believe.

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1 Q. And what about possible food and beverage
2 director, what changes did you think needed to be
3 made?

4 A. I'm drawing a blank as to whether the food
5 and beverage director was employed at that time or
6 not; his name was Roy Chase. I just can't
7 remember. I'm drawing a blank when Roy came
8 onboard.

9 Q. So he was employed after this period, though, at
10 some point?

11 A. He was employed at some point after this
12 period. I just don't remember his official start
13 date and what his position was.

14 Q. Prior to developing this operational audit, did
15 you have any specific -- did you have any
16 discussions with either Mr. Kapral, Mr. Nickerson,
17 Ms. Rodgers or Ms. Perry about possible changes to
18 their position?

19 THE WITNESS: To their specific
20 positions?

21 MS. SCHWAB: Yes.

22 A. I don't believe so.

23 Q. Turning to four pages later beginning the
24 departmental reviews, under general and

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1 Q. Moving to the department's summary for food and
2 beverage a la carte under operational and
3 accounting, the page following the heading for
4 operational and accounting, the first bullet point
5 says, "Labor management controls needs to be
6 implemented in all areas of the department ASAP."
7 Can you explain what you mean by labor management
8 controls there?

9 A. Specifically, cost controls, because as you
10 see in the next line, the labor percentage as a
11 percentage of sales is 54 percent, which is
12 extremely high as an industry standard, and what
13 I'm referring to is management controls, meaning,
14 management of labor costs.

15 Q. Moving on to the following page, department, food
16 and beverage banquet catering. You say, "A
17 restructuring of the sales and banquet team is
18 recommended." Can you explain what you
19 contemplated with the restructuring of that team?

20 A. To the best of my knowledge, I thought that
21 for the operational way it was performing, it
22 appeared to me to have too much expense at the
23 management level, and I felt duties and
24 responsibilities were not clearly defined and that

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1 there was operational efficiencies that could be
2 gained by restructuring the management of that
3 department.

4 Q. Do you remember what specific employees were --
5 you mentioned the banquet sales manager and the
6 banquet managers; do you remember who those
7 employees were at the time?

8 A. Yes. I believe they were Aaron, Jane and
9 Patricia.

10 Q. And then the second bullet point you recommended
11 "Dedicated catering sales manager to be utilized."
12 Did you contemplate that somebody already in the
13 department would take that position or that it
14 would be a new position?

15 A. I do not recall.

16 Q. And do you remember if there was -- a dedicated
17 catering sales manager was utilized at some point
18 in the department?

19 A. I believe the person that was functioning in
20 that role was Jennifer Perry.

21 Q. Before the creation of the operational audit, had
22 you met Patricia Cosgrove, that you can remember?

23 THE WITNESS: Prior to the creation
24 of this?

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1 created out of my office that discussed the F & B
2 reorganization at New Seabury.

3 Q. Do you know when this document would have been
4 produced?

5 A. Specifically, no. In general, in conjunction
6 with the 2003 budget preparation.

7 Q. When was the 2003 budget prepared?

8 A. Some time in the time frame of beginning
9 December and going into January and maybe into
10 February 2003.

11 Q. What does this document show?

12 A. Page 1 appears to be a current versus
13 proposed incentive structure for the food and
14 beverage department. Page 2 appears to be a
15 quarterly breakdown of incentive for the food and
16 beverage banquet sales department. Page 3 appears
17 to be similar to Page 1 with minor changes.

18 Q. Do you know why there would be two different F & B
19 departmental reorganizations with slightly
20 different numbers?

21 A. Let's take a look. Looks to me there were
22 some minor modifications made on base salary and
23 that's really the only difference, that I can see.

24 Q. What do you remember about the discussions or

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1 plans that went into producing this
2 reorganization?

3 A. I remember early on in the operational audit,
4 I felt that the food and beverage sales department
5 needed some reorganization. I immediately
6 questioned in reviewing the department the
7 redundancy in positions for some of the slots so
8 I'm sure that's what precipitated this.

9 Q. Do you remember having any discussions about
10 specific positions to be eliminated or
11 restructured?

12 A. I remember specifically asking why do we have
13 three sales managers in addition to the
14 departmental sales manager, yes.

15 Q. And it appears from this chart that the pay
16 structure as to Roy, Jennifer and Aaron is changed
17 from the current to proposed, Page 1?

18 A. It appears that through my experience, this
19 would suggest that their base salary was being
20 lowered and their incentive was being altered.
21 So, as I maybe stated earlier, we were trying to
22 get to more of an incentive-based program as
23 opposed to a heavily-weighted based salary
24 program.

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1 Q. Do you know if you had any discussions with either
2 Roy, Jennifer or Aaron prior to producing this
3 document?

4 A. No, I don't believe so.

5 Q. Earlier I think you said Aaron, Jane and Patricia
6 were all sales or catering managers, is that the
7 position that you had, earlier you had said there
8 were three people doing --

9 A. Earlier, as in just a minute or so ago, yes.

10 Q. And what was the position, I'm sorry?

11 A. I believe they were either food and beverage
12 sales managers or catering and food and beverage
13 are somewhat interchangeable.

14 Q. In this proposed structure, Jane has a base
15 salary, it says the same, with no incentives but
16 Aaron's pay structure is changed. Do you remember
17 why the difference between the those two
18 positions?

19 A. To the best of my recollection, we were
20 transitioning Jane into a non-sales position but
21 more of an executive management position which is
22 not an incentive-based one.

23 Q. And then as to Patricia, you have no proposed
24 salary as to her, do you remember why that is?

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1 A. I believe that was one of the positions that
2 we had targeted during the budget process at
3 elimination because of the redundancy of the sales
4 team.

5 Q. And is this a position that you would have
6 mentioned in any of the documents that we
7 discussed before, the operational audit or the
8 memos to Mr. Antenucci?

9 MR. WILGOREN: Objection. I think he
10 did in fact testify as to this position.

11 MS. SCHWAB: You can answer.

12 MR. WILGOREN: As part of the
13 operational audit and maybe some other documents.

14 THE WITNESS: I'm sorry, can you ask
15 it again?

16 (QUESTION READ)

17 A. I would assume that this -- the restructuring
18 of the food and beverage sales department as one
19 of the items that were brought up in the
20 operational audit. I believe I questioned the
21 redundancy early on.

22 Q. Do you know if the operational audit would have
23 contemplated the elimination of one of the
24 positions?

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1 Q. Flip two pages further on, there appears to be a
2 notation in the column at the far right, zero.
3 Can you explain that, that's next to the position
4 held by Ms. Cosgrove?

5 MS. SCHWAB: Objection. He hasn't
6 testified whether he recognizes the handwriting.

7 Q. Do you recognize the handwriting?

8 A. It appears to be mine.

9 Q. Can you explain the significance of why you would
10 have written this a zero next to that?

11 A. Similar to other positions, it looked like
12 one that I had targeted for being unnecessary.

13 Q. Okay. And that was part -- that was done as part
14 of the budgeting process in December 2002?

15 MS. SCHWAB: Objection. Again, he
16 testified he doesn't know when this document is
17 from.

18 A. Normally that would be part of the budget
19 projection is to look at past wage levels and
20 scales, and I can assume that's what was going on
21 here.

22 Q. When did you engage in the budgeting process for
23 New Seabury for 2003?

24 MS. SCHWAB: Objection. Asked and

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1 answered.

2 A. We began in December of 2002 and continued
3 through January 2003.

4 Q. At that time did you have any knowledge as to
5 whether Ms. Cosgrove was pregnant?

6 MS. SCHWAB: Objection.

7 A. No, I didn't.

8 Q. There is a question mark, do you recognize who
9 wrote that?

10 A. I would assume that would be me.

11 Q. That's next to the sous-chef. Do you have an
12 explanation why you would put a question mark next
13 to the sous-chef?

14 MS. SCHWAB: Objection. Foundation.

15 A. I can assume it meant, if you look at this,
16 it was a higher paid position than the chef.
17 Typically a sous-chef is similar to an assistant.
18 So, my guess is, logical question as to what's
19 the -- what's going on with the sous-chef being
20 the highest paid person.

21 Q. As part of the budgeting process did you create
22 certain models of staffing levels?

23 A. Typically when you budget, you determine what
24 staffing levels are going to be, if that's what

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